

Motion Hearing - 6/30/2023

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CONCERNED PASTORS FOR SOCIAL ACTION, ET AL,

Plaintiffs,

vs.

Case No. 16-10277

NICK A. KHOURI, ET AL,

Defendants.

_____/

**MOTION HEARING
BEFORE THE HONORABLE DAVID M. LAWSON**
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Friday, June 30, 2023

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- - -

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1 sounds right. I think some weeks the City has completed as
2 many as 30. I think it varies depending on how close together
3 addresses are and, you know, whether every address requires a
4 replacement, which would require more time at each home.

5 THE COURT: Okay. Thank you.

6 MS. ROLNICK: Thank you.

7 THE COURT: Mr. Kuptz, would you like to make a
8 preliminary statement before we begin hearing evidence?

9 MR. KUPTZ: Yes, Judge.

10 Judge, as to the allegation that the City of Flint
11 had not completed the restoration site visits by the deadline
12 set in the Court's prior order, that is technically accurate.
13 The City did not meet that deadline in full. However, that --
14 all of those restoration site visits are now complete.

15 Judge, I'm just checking my notes for the exact
16 number.

17 But since the Court issued that order, the City of
18 Flint has completed almost 27,000 in-person visual inspections
19 of property that are compliant with the court order, meaning a
20 two-person team personally went to each of those almost 27,000
21 addresses, checked the visual inspection criteria, took a
22 photograph of the property, and left a door hanger if they made
23 a determination that restoration was complete.

24 THE COURT: And do they -- did they photograph the
25 door hanger as well?

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1 MR. KUPTZ: Yes, Judge.

2 THE COURT: All right. Now, how is the plaintiff
3 able to verify that?

4 MR. KUPTZ: That is all tracked in the City's
5 Cityworks database.

6 THE COURT: Well, right, but you were supposed to
7 furnish a report and you were supposed to do that on a monthly
8 basis, correct?

9 MR. KUPTZ: Correct, Judge. And some restoration
10 reporting was provided to plaintiffs as far back as March of
11 this year. And in that reporting, restoration reporting,
12 provided to plaintiffs back on June 22nd, it did contain a list
13 of all of the addresses where visual inspection indicated
14 restoration was complete, where visual inspection indicated
15 restoration was needed and a list of known restoration
16 addresses without a visual inspection being conducted and a
17 report indicating where restoration had occurred since November
18 1st.

19 So that information has been provided to plaintiffs.
20 It's my understanding the dispute now --

21 THE COURT: When?

22 MR. KUPTZ: I'm sorry?

23 THE COURT: When?

24 MR. KUPTZ: That report was provided on June 22nd,
25 Judge.

1 excavation.

2 THE COURT: All right. What can you tell me about
3 restoration?

4 MR. KUPTZ: As far as restoration, Judge, 26,679
5 visual inspections were conducted. Homes to complete based on
6 visual inspection was 4,201. And in addition, there were
7 another 805 addresses where restoration was known. Those are
8 the addresses since November 1st --

9 THE COURT: Where restoration was known?

10 MR. KUPTZ: Where the need for restoration was known.

11 THE COURT: So what does the 4,201 number represent?

12 MR. KUPTZ: 4,201 was restoration needed based on a
13 visual inspection, but the addresses that Lakeshore Global has
14 performed an excavation at since November 1st, some of those
15 addresses still need restoration. We knew about those as a
16 city, because Lakeshore Global had been keeping accurate and
17 complete records regarding those, and that number is 805.

18 So, as of last Thursday, there was 5,006 addresses in
19 the City of Flint requiring restoration.

20 THE COURT: So the 4,200 number is -- represents
21 sites that you didn't know about until you did your
22 inspections?

23 MR. KUPTZ: That's correct.

24 THE COURT: And that 805 you knew about, but just
25 hadn't gotten to them yet?

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1 MR. KUPTZ: That's correct. And there were 22,478
2 that were deemed complete based on the visual inspection and
3 that received that door hanger with the information to contact
4 the City if there were concerns.

5 THE COURT: Have you had any contact from any of
6 those deemed complete that the homeowners disputed?

7 MR. KUPTZ: There has been some contact. And under
8 the terms of the prior order resulting from the hearing back in
9 February of this year, the City, through its project manager,
10 ROWE, is required to keep a log of those and we have been
11 keeping that log. There have been some contacts. I don't know
12 the exact number right offhand, but it's been --

13 THE COURT: Can you estimate?

14 MR. KUPTZ: I can't estimate. I know it's been
15 statistically insignificant.

16 THE COURT: Not to the homeowner.

17 MR. KUPTZ: I -- I understand. And the City remains
18 fully and absolutely committed to restoring each of these 5,006
19 properties.

20 THE COURT: Okay. Anything further?

21 MR. KUPTZ: Judge, I would just also note that
22 restoration is currently underway. 545 addresses, as of last
23 Thursday, had received the 22nd -- had received some form of
24 restoration, because, as the Court knows, there's basically
25 three types: There's grass and lawn, there's asphalt and

1 there's concrete.

2 THE COURT: I also thought that there was some
3 requirement to ensure that the water shut-off valve was flush
4 with the ground so it didn't pose a trip hazard.

5 MR. KUPTZ: That's correct. That is a component,
6 also. And LGC has been working -- the contractor, LGC, has
7 been working on the curb stop boxes to make that they're flush
8 and unobstructed.

9 THE COURT: Yeah. Where are those installed mostly?
10 Are those in the curb? In the concrete? In the lawn? In the
11 sidewalk?

12 MR. KUPTZ: Well, in the City of Flint, it just
13 varies depending on the neighborhood. Some areas are older,
14 some are newer, it just depends if the road has been widened at
15 times, if a tree has grown up.

16 It's my understanding they're typically, I believe,
17 between the road and the sidewalk.

18 THE COURT: Is that an easement?

19 MR. KUPTZ: It is, I believe, Judge.

20 THE COURT: Yeah. All right.

21 MR. KUPTZ: And, Judge, just the last thing I would
22 note is that the -- the number of properties that plaintiff
23 asserts should be on the City's restoration reporting, but they
24 allege weren't, was a total of 704 out of 28,215.

25 As I told the Court, Judge, the City remains

1 finished verifying the restoration status of every previously
2 excavated address.

3 THE COURT: And how many are they short?

4 MS. ROLNICK: The June report shows that they're
5 short by 704.

6 THE COURT: That's the one he just mentioned, right?

7 MS. ROLNICK: Yes.

8 THE COURT: Okay. So where do you want to take this
9 then?

10 MS. ROLNICK: So plaintiffs would now like to put on
11 their expert, Noah Attal, to explain his analysis and
12 conclusion that the City's June restoration reporting did not
13 show the restoration status of every previously excavated
14 address.

15 THE COURT: Well, it sounds to me like there's an
16 agreement that at least 704 have not -- or that there has not
17 been a completed report for 704 sites.

18 MS. ROLNICK: I believe the City disputes that --
19 that fact, your Honor.

20 THE COURT: All right. Did -- am I -- did I
21 misunderstand you?

22 MR. KUPTZ: That's correct, Judge. We do dispute
23 that 704 number.

24 THE COURT: Oh, all right. So that's really what's
25 an issue here?

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1 MR. KUPTZ: Correct, yes. That 704 number, that's
2 correct, Judge.

3 THE COURT: All right. Then go ahead and call your
4 first witness.

5 MS. ROLNICK: Thank you. And my colleague,
6 Ms. Tallman, will be handling the examination.

7 THE COURT: Oh, all right.

8 MS. TALLMAN: Good morning, your Honor. Sarah
9 Tallman on behalf of plaintiff.

10 We'd like to call Noah Attal to the stand.

11 THE COURT: Do you have other witnesses besides
12 Mr. Attal?

13 MS. TALLMAN: No.

14 THE COURT: All right. Is Mr. Attal in the
15 courtroom?

16 MS. TALLMAN: Yes.

17 THE COURT: Would you step forward, please? Pause
18 right there for a moment. Raise your right hand and be sworn.

19 (Oath administered at 8:44 a.m.)

20 THE COURT: Would you have a seat right over here in
21 the witness box.

22 THE COURT: Ms. Tallman, you can rotate that lectern
23 so you can face the witness.

24 MS. TALLMAN: Thank you, your Honor.

25 THE COURT: Mr. Attal, adjust that microphone,

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1 please, so you can speak right into the tip of it. You can
2 pull the microphone closer to you if you wish. The chair is
3 not going to move but the microphone will.

4 Would you state your full name and spell your last
5 name for the record.

6 THE WITNESS: My full name is Noah Attal. Last name
7 is spelled A-T-T-A-L.

8 THE COURT: Thank you.

9 And hold on for a minute, Ms. Tallman.

10 All right. You may proceed.

11 MS. TALLMAN: Thank you, your Honor.

12 DIRECT EXAMINATION

13 BY MS. TALLMAN:

14 Q. Good morning, Mr. Attal.

15 Can you describe your educational background for the
16 Court?

17 A. Yes. I did an undergraduate degree at the University of
18 Michigan in Earth and Environmental Science and I'm currently
19 pursuing my Master's Degree in Public Policy and Information
20 Science at the University of Michigan.

21 Q. Do any of those degrees involve the study of data
22 analysis?

23 A. Yes, I did data analysis in both my undergraduate degree
24 and currently my master's degree.

25 Q. Are you currently employed?

1 100,000 observations for Detroit.

2 And with Safe Water Engineering, I did a lot of data
3 analysis of lead service line replacement, a complete analysis
4 of the DC -- the District of Columbia's proposed lead service
5 line replacement plan and some in Benton Harbor as well.

6 Q. Do you use software tools to conduct your work in data
7 analysis?

8 A. Yeah, I primarily rely on STATA, which is the statistical
9 software package for --

10 THE COURT: I'm sorry. What do you rely on?

11 THE WITNESS: I rely on a package known as STATA.

12 It's --

13 THE COURT: How do you spell it?

14 THE WITNESS: S-T-A-T-A.

15 It is a statistical package primarily used by
16 economists, similar to R, if you're familiar with R, and that's
17 a tool used for data management and statistical analysis.

18 I also rely on ArcGIS and SAR's ArcGIS platform,
19 which is an industry standard for mapping and spatial
20 statistics.

21 BY MS. TALLMAN:

22 Q. And just for clarity of the record, STATA is generally
23 spelled in all caps; is that correct?

24 A. That is correct, STATA is spelled in all caps.

25 Q. Mr. Attal, do you consider yourself a data analyst?

1 A. Yes, I do.

2 Q. And what is a data analyst?

3 A. Depending on the industry, data analysts look very
4 different. I assume that data -- or my understanding is that
5 data analysts take information and produce results that can
6 inform decisions. So working with spreadsheets and large
7 amounts of data to inform decisions.

8 MS. TALLMAN: Your Honor, I could go in more detail
9 through Mr. Attal's qualifications but in the interest of time
10 and unless defense counsel has any objections, I would like to
11 offer Mr. Attal as an expert in data analysis and refer to his
12 CV, which is part of Plaintiff Exhibit 64.

13 Oh, I'm sorry, it is not part of 64. It is
14 Plaintiff's -- Plaintiff's Exhibit Number 58, which we provided
15 in advance to the Court, and defense counsel has stipulated to
16 its authenticity and admissibility.

17 Thank you, your Honor.

18 May I offer that exhibit into evidence?

19 THE COURT: Any objection to 58?

20 MR. KUPTZ: No, Judge. No objection.

21 THE COURT: It is received.

22 MS. TALLMAN: Thank you, your Honor.

23 BY MS. TALLMAN:

24 Q. Mr. Attal, have you been asked by plaintiffs --

25 THE COURT: Where is 58?

1 Q. And on what topic?

2 A. I've been asked to testify on whether or not the
3 restoration data provided on June 22nd was inclusive of all
4 previous excavations and service line replacements reported to
5 the plaintiffs from 2017 onwards.

6 Q. So, in other words, you were asked to compare excavation
7 and replacement data with the City's June 22nd reporting on
8 restoration status?

9 A. That is correct.

10 Q. Did you prepare a written declaration to be submitted in
11 this case?

12 A. Yes, I did.

13 MS. TALLMAN: Your Honor, I'd like to prepare to
14 offer another exhibit into evidence. This has been pre-marked
15 as Exhibit 57.

16 Joe, do you need a copy? It's the declaration.

17 MR. KUPTZ: I have it. Thank you.

18 MS. TALLMAN: You have it. Good.

19 Permission to approach the witness with the document?

20 THE COURT: Do you have the exhibits that you're
21 going to be asking the witness about in a binder for him?

22 MS. TALLMAN: We do not.

23 THE COURT: So are you going to be walking back and
24 forth every time you have an exhibit?

25 MS. TALLMAN: Yes.

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1 I can hand him -- if you give me one moment, I can
2 compile the couple that I'm going to prepare to present to him.
3 We can also pull them up on the computer.

4 THE COURT: Do you have them up on your screen?

5 MS. TALLMAN: We can -- we can pull them up, yes.

6 Nicole, can you please pull up Plaintiff's Exhibit
7 57?

8 Would the Court --

9 THE COURT: Mr. Attal, do you see that up there?

10 THE WITNESS: Yes, I see Exhibit 1, declaration of
11 Noah Attal.

12 THE COURT: Okay.

13 MS. TALLMAN: Your Honor, would you like a paper copy
14 of the exhibit?

15 THE COURT: No.

16 MS. TALLMAN: Okay.

17 BY MS. TALLMAN:

18 Q. Mr. Attal, have you seen this document before?

19 A. Yes, I have.

20 Q. What is it?

21 A. This is the declaration that I submitted.

22 Q. And if you page through it to confirm on the last page is
23 your signature there?

24 A. Yes, the last page contains my signature.

25 MS. TALLMAN: Your Honor, I'd like to offer into

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1 evidence the declaration of Noah Attal, Plaintiff's Exhibit
2 Number 57. It has also been previously filed as attached to
3 plaintiff's reply on the motion to contempt, ECF number 266-1.

4 THE COURT: His declaration is basically summarizing
5 what's he's going to testify about today?

6 MS. TALLMAN: Correct.

7 THE COURT: So why shouldn't that be a hearsay
8 document? Why should we receive it?

9 MS. TALLMAN: Mr. Attal has verified to its
10 authenticity and he is prepared here to testify --

11 THE COURT: I don't think anybody's questioning his
12 authenticity.

13 Do you have a response to my question?

14 MS. TALLMAN: Yes, your Honor, it's not hearsay
15 because Mr. Attal has personal knowledge and prepared the
16 declaration for this case, so he is prepared to describe that
17 it's -- it's his words and that he recalled and has personal
18 knowledge of it.

19 THE COURT: And that's your response to a hearsay
20 concern?

21 MS. TALLMAN: Yes, your Honor.

22 THE COURT: Do you have an objection to 57?

23 MR. KUPTZ: Judge, I -- I understand the Court's
24 concern about hearsay. The City leaves it to the Court's
25 discretion.

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1 THE COURT: My question is, do you have an objection
2 to 57?

3 MR. KUPTZ: I do not, Judge.

4 THE COURT: All right. I'll receive 57.

5 MS. TALLMAN: Thank you, your Honor.

6 BY MS. TALLMAN:

7 Q. Mr. Attal, did plaintiffs ask you to analyze a particular
8 question for purposes of developing your declaration?

9 A. Yes, I was asked to analyze, as stated previously, whether
10 or not restoration -- the restoration data provided on June
11 22nd was comprehensive of all service line excavations and
12 replacements that the City had documented and provided to the
13 plaintiffs.

14 Q. And do you have the skills necessary to analyze that
15 question?

16 A. Yes, I do.

17 Q. Is this similar to work you've done before?

18 A. It's very similar work I've done before.

19 Q. Have you reached any conclusions about the City's progress
20 towards identifying the restoration status of every excavated
21 home in Flint?

22 A. Yes, I've reached conclusion there's approximately 700
23 addresses that the City has not included in its restoration
24 files, that the City has reported excavations and replacements
25 on previously.

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1 THE COURT: I'm sorry. There's 700 addresses not
2 included in their files and what now?

3 THE WITNESS: There are approximately 700 addresses
4 that were not reported in the restoration files provided to the
5 plaintiffs on June 22nd that were reported previously to the
6 plaintiffs as addresses with excavations and/or service line
7 replacements.

8 So the City had non-reported a restoration status
9 whether that restoration is complete or incomplete.

10 THE COURT: Oh, okay. These are -- these 700
11 addresses, there were -- there was excavation activity but no
12 restoration status reported, is that what you're saying?

13 THE WITNESS: Yes.

14 THE COURT: I get it. Okay. Thank you.

15 BY MS. TALLMAN:

16 Q. And so, to confirm, you found some addresses where the
17 data showed an excavation or service line replacement but they
18 were not included on the City's June 2023 reporting concerning
19 restoration status?

20 A. That is correct.

21 Q. I'm going to ask you now about that conclusion and the
22 scientific bases to support that conclusion.

23 Can you describe at a high level how you completed your
24 analysis?

25 A. Yeah. At a high level, I compiled all the addresses that

1 the City had reported excavations or service line replacements
2 into a very long list and -- and then I geocoded that list.

3 THE COURT: And where did you get that data to begin
4 with?

5 THE WITNESS: That data was provided to me by the
6 plaintiffs.

7 THE COURT: In the form of what, previous reports and
8 so forth?

9 THE WITNESS: Yes, monthly, quarterly, a couple
10 comprehensive reports to date from 2017 to -- until present.

11 THE COURT: All right. Did you work off
12 spreadsheets?

13 THE WITNESS: They were given to me in Excel
14 spreadsheets and I uploaded the data into the statistical data.

15 THE COURT: Did you have to code all of that by hand?

16 THE WITNESS: So I didn't have to code the data
17 itself, as it was already in an Excel spreadsheet.

18 What I was able to do is I was able to upload it to
19 the platform I was working with and then append and merge the
20 data from there.

21 THE COURT: So your processing software could
22 interface with Excel?

23 THE WITNESS: Yes, the processing software can
24 interface with Excel.

25 THE COURT: I see. I'm sorry.

1 Go ahead.

2 BY MS. TALLMAN:

3 Q. And so, you -- after you looked at the data, what was the
4 first step in your analysis?

5 A. So the first step was to create a comprehensive list of
6 where there were all service line excavations or replacements.
7 So I took all the spreadsheets, around 40 spreadsheets that
8 were given -- that was my understanding the City gave to the
9 plaintiffs, and the plaintiffs provided to me, from 2017
10 onwards and I compiled them into a long list of where the City
11 has completed service line excavations and replacements.

12 I then took that and I uploaded it into ArcGIS software,
13 which -- I then took that long list and I uploaded it into an
14 ArcGIS software, which allows me to geocode the addresses,
15 which is an important aspect of this analysis.

16 THE COURT: Okay. Let me just step back for a
17 minute.

18 Now, you were identifying locations where the City
19 had completed service line replacements?

20 THE WITNESS: Service line replacements or
21 excavations.

22 THE COURT: Or excavations. Okay.

23 THE WITNESS: Correct.

24 THE COURT: And how many sites were those?

25 THE WITNESS: I don't have the exact number off the

1 top of my head.

2 THE COURT: Did you have it available to you
3 somewhere?

4 THE WITNESS: The City completed -- is it
5 restorations?

6 THE COURT: I don't remember if you included that in
7 your declaration or not.

8 THE WITNESS: Yes, there's 28,215 addresses where the
9 City must complete property restoration under the settlement
10 agreement.

11 THE COURT: All right. Thank you.

12 Go ahead.

13 THE COURT: Well, I guess we should wait for a
14 question.

15 MS. TALLMAN: Nicole, can you please pull up
16 Plaintiff's Exhibit 55 -- or, sorry, 25 on the screen?

17 THE COURT: This is a proposed exhibit, right?

18 MS. TALLMAN: This is, yeah, proposed Plaintiff's
19 Exhibit 25.

20 MS. TALLMAN: Your Honor, in advance of this hearing,
21 defense counsel has stipulated that this document shown on the
22 screen was attached to an email, dated April 29th, 2019, and
23 it's part of the City of Flint's status report, dated April
24 29th, 2019, describing addresses where a service line was
25 excavated or replaced by the City.

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1 Plaintiffs would like to offer this proposed exhibit
2 into evidence.

3 Joe, do you have a copy?

4 THE COURT: How do you characterize it?

5 MS. TALLMAN: Excel file, titled 2019.04.29, monthly
6 report --

7 THE COURT: It's an Excel file?

8 MS. TALLMAN: Yes.

9 THE COURT: All right. Any objection to 25?

10 MR. KUPTZ: No objections, Judge.

11 THE COURT: 25 is received.

12 BY MS. TALLMAN:

13 Q. Mr. Attal, do you recognize this document?

14 A. Yes, this is one of the documents that I had included in
15 the service line restoration exploration.

16 Q. And can you read the -- the top line above the box?

17 A. Yes, the top line is 2019.04.29 monthly report.

18 Q. And do you understand 29 -- 2019.04.29 to be a date?

19 A. Yes.

20 Q. And that would be April 29th, 2019?

21 A. That's what I understand.

22 Q. Can you read the heading of the column furthest to the
23 left?

24 A. Furthest to the left is address of service line
25 exploration.

1 Q. And what do you see beneath that column?

2 A. I see a list of addresses.

3 Q. And the column second from the left, can you read that
4 title?

5 A. Service line exploration date.

6 Q. And what do you understand exploration to mean?

7 A. My understanding of exploration is when the City went to
8 an address to determine whether or not they needed to replace
9 the service line, so they did what's called, like, a test bid
10 to determine the service line material. And then if the
11 service line material needed to be replaced, an exploration
12 would include replacing that service line material.

13 Q. And another word used for exploration would be excavation;
14 is that right?

15 A. Yeah, excavation could be used.

16 Q. Okay. Mr. Attal, what do you understand this document to
17 reflect?

18 A. I understand this document to reflect a list of addresses
19 where the City has completed service line explorations and
20 replaced or identified where they need to replace service
21 lines.

22 Q. Did you consider other files similar to this in your
23 analysis?

24 A. Yes, this is fairly similar to all the files I considered
25 as a service exploration or restoration files.

1 Sorry, not restoration, service exploration or
2 replacement files.

3 Q. Okay. And how did you determine whether a spreadsheet or
4 file you were looking at reflected excavation or replacement
5 data?

6 A. The City used a couple different terms when providing
7 spreadsheets. The fast exploration was a common one. Most of
8 the variables were similar to the ones in this spreadsheet so
9 they would have an address, it would have a date labeled, some
10 variation of service line exploration date or SLE date
11 sometimes. And then it would usually include the service line
12 or what the findings of the material was, so copper, non-copper
13 on the public side and the private side, which indicates that
14 they had actually excavated.

15 Q. And that information was contained -- was it contained in
16 multiple files?

17 A. Yes, it was contained in approximately 40 different files.

18 Q. And what did you do with the information in those 40
19 files?

20 A. The first step of my analysis was taking the addresses
21 from those 40 different files and compiling them into a large
22 list of addresses.

23 THE COURT: I'm looking at what's on the screen now.
24 As far as what I can see, there are 29 addresses there.

25 Are you familiar with the actual work that was

1 required to be done in order to excavate and determine what the
2 composition of the service line was?

3 THE WITNESS: I'm familiar with the --

4 Like, the process? I haven't seen it done in person
5 but I'm familiar that the City for a service line exploration
6 would go and dig close to where the boundary was between the
7 private side and the public side of the service line and
8 determine the material on either side of that and then
9 sometimes also go in the house and determine the material on
10 the inside of the house to verify whether or not a line is
11 copper or not copper. And those materials could be different
12 depending on when they were installed.

13 THE COURT: All right. And looking at the exhibit,
14 what do you understand the second column from the left to mean?

15 THE WITNESS: The second column to the left, service
16 line portion -- oh, second to the left. Sorry. Service line
17 exploration date. I understand that to be the date in which
18 the City has excavated, so determined the material, not
19 necessarily the date that it was replaced.

20 THE COURT: Okay.

21 THE WITNESS: So, in other cities, or in cities like
22 DC, often a crew will excavate a bunch of houses in a row,
23 determine the ones that need to be replaced and replace them
24 later, so that's why I see a difference between the service
25 line excavation date and the service line replacement date.

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1 THE COURT: All right. And what do you -- what do
2 you understand the last column on the right to be?

3 THE WITNESS: The service line replacement date. I
4 understand the service line replacement date to be the date
5 that the City completed any service line replacement needed at
6 that address, if a service line replacement was needed.

7 THE COURT: All right. And in this particular
8 example, are there any differences between the date of
9 excavation and the date of replacement?

10 THE WITNESS: In this example, I don't see a
11 difference.

12 THE COURT: All right. Do you know if it's feasible
13 to complete 29 excavations in a single day?

14 THE WITNESS: Twenty-nine excavations in a single
15 day? Depending if there was multiple crews, I could see it
16 very feasible to complete 29 excavations in a single day.

17 THE COURT: And how about eight replacements in a
18 single day?

19 THE WITNESS: Again, depending how many crews are
20 working, that's something that could be feasible.

21 I have absolutely no knowledge, though, of how many
22 crews or contractors were working on these projects.

23 THE COURT: All right. In looking at this document
24 that has the same dates for all of these addresses, at least
25 the ones on the screen, did it cause you to question the

1 veracity of the representations?

2 THE WITNESS: Not at all. I -- I think when doing
3 service line explorations and replacements, especially when you
4 need to do 28,000, there's probably a ramp-up period. And once
5 crews are moving and they have their addresses that they need
6 to do, they can move quickly through them.

7 THE COURT: Okay. Thank you.

8 Go ahead, Ms. Tallman.

9 MS. TALLMAN: Thank you, your Honor.

10 BY MS. TALLMAN:

11 Q. Mr. Attal, if for those homes where you see an address in
12 the left-hand column and a date in the second to the left
13 column, under service line exploration date, do you understand
14 there to have been an excavation there on the date listed?

15 A. Yes, that is my understanding.

16 Q. Okay. And how did you go about combining all of the data
17 that had excavation and replacement in it?

18 A. Yes, so I relied very heavily on this data as statistical
19 package to do so, so I would upload all 40-some spreadsheets
20 into the package via code and that would create a long list of
21 addresses where the City has reported service line exploration.

22 Q. Were there any duplicates in that list?

23 A. Yeah, there were multiple duplicates, which can pose quite
24 a problem. There was also a couple misspellings of addresses,
25 alternate spellings of addresses. Those were the biggest

1 concerns that needed to be addressed.

2 So the next step was to geocode every single address
3 and I did that in ArcGIS, and that process allowed me to
4 condense that list so that there was only -- every -- each
5 address was only represented once in the list, not multiple
6 times.

7 Q. And what does geocode mean for those of us who are not
8 data analysts?

9 A. Geocoding is the process of taking an address. Most
10 likely, these are partial addresses, they're not full addresses
11 with, like, zip lines and, like, all the data that address
12 usually has and determining where that address is on a map.

13 There's -- ArcGIS uses a geocoding service that is
14 pretty industry standard in determining where addresses are.

15 Q. So after you compiled a single list of every home where
16 the City had -- where you had data showing excavations and
17 replacements, what was the next step in your analysis?

18 A. The next step of the analysis was to do the same for the
19 restoration data, so I took the tabs of the restoration data
20 and all the addresses reported in the restoration data and I
21 did a very similar process in which I compiled them into a long
22 list and I geocoded them as well to make sure there was no
23 duplicates or addresses reported in multiple different tabs.

24 Q. And for the restoration data you're referring to, were
25 there specific files that you considered?

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1 A. Yes, I considered the two files that were, if my
2 understanding were given to the plaintiffs by the City on June
3 22nd and they had given to me.

4 THE COURT: Was that -- were those more Excel
5 spreadsheets?

6 THE WITNESS: Yes.

7 MS. TALLMAN: Nicole, if you could please pull up
8 Defense Exhibit -- what is labeled 1-1, 1-2 and 1-3 on the
9 screen.

10 THE COURT: Those are proposed exhibits?

11 MS. TALLMAN: Proposed -- I apologize, your Honor.
12 It's proposed defense Exhibit 1-1, 1-2, 1-3. It's a single
13 Excel file with three different tasks.

14 THE COURT: Are those defense exhibits or yours?

15 MS. TALLMAN: Defense exhibits.

16 THE COURT: Okay.

17 MS. TALLMAN: Your Honor, the parties have stipulated
18 to the authenticity and the admissibility of the Excel file
19 shown on the screen. This is an Excel file that was produced
20 by the City's counsel to plaintiff's counsel in June 2023.

21 THE COURT: All right. The screen has some very
22 limited information on it. I take it it's broader than that?

23 MS. TALLMAN: Yes.

24 THE COURT: And these are Excel files that represent
25 restorations completed?

1 MS. TALLMAN: Yes. There are three tabs. And so tab
2 1, if -- your Honor, may I go closer to the screen so I can
3 read it more clearly?

4 THE COURT: Yeah, sure.

5 MS. TALLMAN: Okay. Thank you. So the tab furthest
6 to the left, Mr. Attal, can you read the tab furthest to the
7 left, the title of that?

8 THE COURT: Is that column A, you're talking about?

9 MS. TALLMAN: So if you look at the very bottom of
10 the --

11 THE COURT: Oh, down at the bottom. Okay.

12 THE WITNESS: Yes. So that tab is known homes to
13 complete.

14 BY MS. TALLMAN:

15 Q. And what do you -- and if -- what is the row one in column
16 A, the title of that column?

17 A. Address.

18 Q. And what do you understand this tab to reflect?

19 A. I understand this tab to reflect the addresses in which
20 the City understood they needed to complete restoration despite
21 not having visually inspecting it.

22 MS. TALLMAN: Nicole, can you please click over to
23 that middle tab?

24 BY MS. TALLMAN:

25 Q. Mr. Attal, can you read the title of that middle tab on

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1 the bottom?

2 A. Homes to complete based on VI.

3 Q. And what do you understand VI to mean?

4 A. My understanding of VI is visual inspection.

5 Q. And what is the title of the first column on the left?

6 A. Address.

7 Q. And what is the title column E? It's the third column
8 over.

9 A. Visual inspection date.

10 Q. And what do you understand this tab to reflect?

11 A. I understand this tab to reflect the list of addresses
12 which the City understood they need to complete restoration
13 based on visual inspection.

14 MS. TALLMAN: And, Nicole, can you please click over
15 to the third tab on the right?

16 BY MS. TALLMAN:

17 Q. Mr. Attal, can you read the title of this tab?

18 A. Homes completed based on VI.

19 Q. And what do you understand VI to mean?

20 A. VI is -- I understand VI to mean visual inspection.

21 Q. And what is the title of the first column on the left?

22 A. Address.

23 Q. And what is the title of column E?

24 A. Visual inspection date.

25 Q. And what do you understand this spreadsheet to reflect?

1 I'm sorry. I apologize. What do you understand the
2 tab on this to reflect?

3 A. I understand this tab to reflect the homes that the City
4 has completed restoration on based on visual inspection.

5 Q. If an address was --

6 THE COURT: Excuse me, Ms. Tallman.

7 BY MS. TALLMAN:

8 Q. Mr. Attal, if an address was listed on any tab -- well,
9 strike that.

10 Mr. Attal, did you consider this file in your
11 analysis?

12 A. Yes, I considered this file in all three tabs on this
13 file.

14 Q. And what -- if an address was listed in any of the three
15 tabs in this file, what did you -- what did you conclude about
16 that address?

17 A. I understood if an address was listed on any of these
18 three tabs that the City had reported restoration status,
19 whether they reported they knew it need to be completed or that
20 it's been completed.

21 MS. TALLMAN: Thank you. Plaintiffs would like to
22 move to admit proposed defense Exhibit 1-1, 1-2, 1-3 into
23 evidence.

24 THE COURT: Since they're your exhibits, I presume
25 you have no objection.

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1 MR. KUPTZ: I don't object, Judge.

2 THE COURT: They are received.

3 MS. TALLMAN: Thank you, your Honor.

4 Nicole, can you please pull up proposed defense
5 Exhibit 4-1?

6 Nicole, can you zoom out a little bit?

7 THE COURT: Are these all part of the disclosures
8 from June 22nd?

9 MS. TALLMAN: Yes, these two files, proposed defense
10 Exhibit 1-1, 1-2, 1-3 and 4-1, correct.

11 THE COURT: Okay.

12 MS. TALLMAN: Plaintiffs would like to offer proposed
13 defense Exhibit 4-1 into evidence. I will --

14 THE COURT: Describe it for the record.

15 MS. TALLMAN: Yes. This is a spreadsheet that the
16 City's counsel produced to plaintiff's counsel. It's an Excel
17 file, titled 2023-06-21, restoration completed and current
18 phase. And it's an Excel file with a single tab.

19 THE COURT: Any objection to 4-1?

20 MR. KUPTZ: None, Judge.

21 THE COURT: 4-1 is received.

22 MS. TALLMAN: Thank you, your Honor.

23 BY MS. TALLMAN:

24 Q. Mr. Attal, have you seen this file before?

25 A. Yes, I have.

1 Q. Did you consider this file in your analysis?

2 A. Yes, I did.

3 Q. Can you read the name of the tab at the bottom of the
4 screen?

5 A. Restoration complete.

6 Q. And what is the title of column A?

7 A. Address.

8 Q. And what is the title of column E?

9 MS. TALLMAN: And, Nicole, can you expand column E so
10 it's visible?

11 Yeah. Thank you.

12 BY MS. TALLMAN:

13 Q. What is the title of column E?

14 A. I still can't read part of title -- column E.

15 Hard service start date.

16 Q. And what's the title of column F?

17 A. Soft surface -- oh, hard surface.

18 MS. TALLMAN: And, Nicole, can you click on F- -- F1?

19 THE WITNESS: I'm sorry. Column F, I couldn't see
20 completely. It's hard service complete date.

21 BY MS. TALLMAN:

22 Q. And the title of column G?

23 A. Soft surface start date.

24 Q. And the title of column H?

25 Give us one moment to expand it.

1 A. Soft service complete date.

2 Q. Okay. What do you understand this spreadsheet to reflect?

3 A. I understand this spreadsheet to reflect the list of
4 addresses in which the City has completed restoration.

5 Q. And do you understand that to be the case even if there's
6 some blank cells? For example, on the screen, I see there's
7 some blanks in column E and column F. So, for example, what
8 did you conclude about the home listed in row 4?

9 MS. TALLMAN: And, Nicole, can you highlight row 4?

10 THE WITNESS: My conclusion of the home in row 4 was
11 there was no need to complete any hard surface restoration, so
12 soft service restoration was completed and restoration was
13 therefore completed at the home.

14 BY MS. TALLMAN:

15 Q. So if an address was listed at all on this spreadsheet,
16 what did you conclude about that address?

17 A. I concluded that all addresses on this spreadsheet had the
18 restoration completed.

19 Q. Okay. And were the two spreadsheets that we've just
20 looked at, defense Exhibit 4-1 and defense Exhibit 1-1, 1-2,
21 1-3, two Excel files, were those the only restoration reporting
22 involved in the comparison in your declaration?

23 A. In my declaration, yes.

24 Q. Thank you.

25 So once you had the list of homes where the City

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1 reported a restoration status and a list of homes that you
2 talked about earlier where the City reported an excavation and
3 replacement, what was the next step in your analysis?

4 A. It was geocoding both of those lists. And the geocoding
5 process allowed me to condense those lists so that each list
6 only showed an address once on the list and it also allowed me
7 to standardize the address as sometimes addresses appear in
8 multiple forms, like you could have a 555 North Stevenson
9 versus 555 Stevenson. The standardization allowed much easier
10 to compare which addresses were on which list.

11 Q. And then once you had done that process of geocoding, what
12 did you do next?

13 A. I compared the two lists together to determine which
14 addresses were present on which list. And my conclusion was
15 there was approximately 700 addresses that were present within
16 the excavation and service line replacement files but not
17 present on these restoration files.

18 Q. Okay. So there were several hundred homes where you
19 understood the City's spreadsheets to show an excavation or
20 service line replacement, but those did not appear on the two
21 spreadsheets we just looked at earlier, defense Exhibit 4-1 and
22 defense Exhibit 1-1, 1-2, 1-3?

23 A. Correct.

24 Q. Okay. Was your analysis limited to data that you
25 understood to be reported by the City?

1 A. Yes, my analysis was limited to data that I understood to
2 be reported by the City and that was given to me by the
3 plaintiffs.

4 Q. And who do you understood to have created those data
5 files?

6 A. It was my understanding that all the files I looked at
7 were created by the City of Flint.

8 Q. Is it possible that you're missing a file that contains
9 excavation and/or replacement data?

10 A. It is possible that I'm missing a file that contains
11 excavation or replacement data.

12 Q. If you were missing such a file, would that -- how would
13 that affect your analysis?

14 A. If I was missing an excavation or replacement file, it
15 would just -- including that file would only -- could only
16 serve to increase the number of homes that were not present on
17 the restoration file. It wouldn't take away from the homes
18 that I've identified that are not listed.

19 Q. Okay. After you submitted the declaration in your case,
20 did you conduct any additional analysis?

21 A. Yes, I did.

22 Q. What was that analysis?

23 A. The geocoding process that I referred to was something
24 that I conducted after this analysis and that was a robustness
25 check to ensure that the addresses identified in my declaration

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1 were also identified during the geocoding process.

2 Q. And did you also consider any additional data files after
3 you submitted your declaration?

4 A. Yes. After I submitted my declaration, I also did another
5 robustness check, which involved looking at all the restoration
6 data that the City has provided or that plaintiffs had provided
7 me. And that data goes back to March and I wanted to ensure
8 that the addresses that I've identified as missing on the
9 restoration -- in the restoration data weren't present in
10 previous reporting that I had just missed.

11 Q. And what did you find when you included that additional
12 restoration status reporting?

13 A. I found 168 addresses that I had identified missing in the
14 June reporting were present in the May reporting, but only
15 present as TBD, to be determined. Therefore, I did not have
16 status.

17 There were six addresses that were reported in May
18 with status that were not reported in the June data.

19 Q. And did you understand when you conducted your original
20 analysis, the one that's in the declaration, did you understand
21 -- or did you assume that the City's June reporting was
22 cumulative for all addresses for which they were reporting a
23 restoration status?

24 A. Yeah, for the purpose of the declaration, my assumption
25 was the June data was cumulative and that assumption was based

1 off my understanding of the court order.

2 Q. And when you did your initial -- your subsequent
3 cross-check with the spreadsheet provided earlier in May by the
4 City, you found a handful of addresses that appeared that
5 reported a restoration status in May but they had fallen off
6 the June list, correct?

7 A. That is correct.

8 MS. TALLMAN: Nothing further, your Honor.

9 THE COURT: All right. Do you have questions for the
10 witness, Mr. Kuptz?

11 MR. KUPTZ: Yes, Judge.

12 THE COURT: You may proceed.

13 CROSS-EXAMINATION

14 BY MR. KUPTZ:

15 Q. Mr. Attal, am I pronouncing that right? Mr. Attal?

16 A. Yep.

17 Q. My name is Joe Kuptz. I'm an assistant attorney with the
18 City of Flint and I'm here representing the City of Flint. I
19 listened to your testimony and I just have a few questions for
20 you.

21 Have you reviewed the original settlement agreement
22 entered in this lawsuit or any of the amendments or
23 stipulations that came after that?

24 A. Yes, the plaintiffs provided me with sections of those
25 stipulations and the original settlement.

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1 THE COURT: All right. Thank you.

2 Let me see if I can understand what you have
3 testified to in a nutshell.

4 As I understand it, you received various Excel
5 spreadsheets that were represented as having come from the City
6 of Flint; is that correct?

7 THE WITNESS: Yes.

8 THE COURT: All right. And you reviewed the files
9 that recited the sites where excavations had occurred; is that
10 correct?

11 THE WITNESS: Yes, excavations and replacements.

12 THE COURT: Well, excavation -- replacement really
13 doesn't matter if it was replaced or not. If there's an
14 excavation, it has to be restored whether replacement occurred,
15 right?

16 THE WITNESS: Yeah, that's my understanding.

17 THE COURT: All right. And then you received files
18 where restorations were completed also represented to you as
19 having come from the City of Flint?

20 THE WITNESS: Yes, I received those files.

21 THE COURT: All right. And then you used your tools
22 to duplicate the addresses including the geolocation features,
23 correct?

24 THE WITNESS: Correct, I would add, along with just
25 restorations completed, I was also given a list of restorations

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1 that were not completed but the City identified they needed to
2 complete.

3 THE COURT: But they were started?

4 THE WITNESS: No.

5 THE COURT: Oh, I see. Okay.

6 THE WITNESS: I was given a list of all addresses
7 that the City had determined they needed to complete or that
8 they had already completed.

9 THE COURT: All right. If an address needed to be
10 complete, it doesn't mean that work was started on it; is that
11 right?

12 THE WITNESS: That's my understanding.

13 THE COURT: Okay. So that really didn't figure into
14 where restorations had to be completed because the work hadn't
15 even been started, right?

16 THE WITNESS: I'm sorry. I don't understand.

17 THE COURT: Yeah. How did that -- how did the
18 information about addresses where work had to be completed
19 figure into whether restorations had to be completed?

20 THE WITNESS: So it's my understanding that the
21 plaintiffs -- the question that the plaintiffs had asked me was
22 the list of restoration status, so all the addresses that the
23 City had reported they needed to complete that were completed
24 or were in the process of completion, that list very
25 comprehensive, 28,000 plus addresses, did that cover every

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1 single excavation that the City had reported? And my finding
2 was, there are approximately 700 addresses where I -- the City
3 has reported an excavation but has not reported they need to
4 complete a restoration or reported that a restoration has been
5 completed.

6 THE COURT: All right. So if there's a -- if there's
7 an address where work has to be done but hasn't started yet,
8 did you include that in that 700 number if there was no
9 restoration reported?

10 THE WITNESS: I'm sorry. Do you mind asking that
11 question again?

12 THE COURT: Yeah. This is what I'm trying to find
13 out. If a contractor starts digging on the property but
14 doesn't restore the landscape or hard surface, or whatever it
15 happens to be, that certainly would have been a location that
16 went into one of your 700 addresses, right?

17 THE WITNESS: Not necessarily.

18 THE COURT: Oh, explain.

19 THE WITNESS: So -- so the City has reported -- my
20 understanding of the restoration data that was given to us is
21 there's a -- you know, the City has provided data on
22 28,000-plus homes in which either they've completed the
23 restoration or they've identified someone was digging and
24 didn't complete the restoration. And that is a comprehensive
25 list. And what I do is I took that comprehensive list and I

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1 compared it to my understanding where they reported excavations
2 and I found there was roughly 700 addresses that there's
3 reported an excavation but the City has not determined or not
4 even listed that they need to restore that address or that
5 they've checked it and it has been restored. There's
6 absolutely no status associated with it.

7 THE COURT: All right.

8 THE WITNESS: It's missing.

9 THE COURT: So I go back to my question a little bit
10 earlier.

11 How does the data that recites parcels where
12 excavation has yet to be performed figure into that
13 differential?

14 THE WITNESS: It is -- I've -- I've determined that
15 parcels in which a restoration has yet to be performed.

16 THE COURT: Not restoration, excavation.

17 THE WITNESS: Oh, excavation. I'm sorry. I misheard
18 you.

19 So excavations that have yet to be informed, I have
20 not included in this analysis.

21 THE COURT: All right.

22 THE WITNESS: So only excavations that I've known --
23 that are -- it's my understanding that have been completed.

24 THE COURT: All right. So, basically, what you did
25 is identify the parcels where excavations occurred and then

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1 identified the parcels where restoration was reported completed
2 or didn't have to be done and extracted the difference and came
3 up with 704 houses, right?

4 THE WITNESS: I compared where excavations had been
5 completed to where the City has reported that they either need
6 to restore, it has been restored, or they know they need to
7 restore it. So any -- any restorations status.

8 THE COURT: All right. And the 704 parcel number
9 represents what then?

10 THE WITNESS: Represents addresses that the City has
11 not given us any sort of restoration information on so we don't
12 know if the City has determined it needs to be restored, not
13 restored, completed, et cetera.

14 THE COURT: Okay. So among those 704 parcels, it's
15 conceivable that no restoration was needed or that it was
16 completed, or that it still need -- work still needs to be
17 done?

18 THE WITNESS: We don't know.

19 THE COURT: Right. But it could be any one of those
20 three categories, right?

21 THE WITNESS: Yes.

22 THE COURT: Okay. So the 704 parcel number
23 represents essentially an information void?

24 THE WITNESS: That is correct.

25 THE COURT: Okay. I understand.

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1 Now, do you have any further questions, Ms. Tallman,
2 after my inquiry there?

3 MS. TALLMAN: Just a few to hopefully clarify some of
4 your questions.

5 THE COURT: Yeah, go ahead.

6 REDIRECT EXAMINATION

7 BY MS. TALLMAN:

8 Q. Mr. Attal, considering the two June spreadsheets that you
9 considered, so defense Exhibit 4-1 and 1-1, 1-2, 1-3, did you
10 understand that those spreadsheets were to provide a yes or no
11 answer as to whether the addresses either needed restoration or
12 do not need restoration?

13 A. It's my understanding that those sheets provided
14 essentially a yes or no with context of whether or not they
15 determined that via visual inspection or not.

16 Q. And the 704 addresses you identified as missing, there was
17 data showing an excavation or replacement, they were not on
18 those two restoration reporting spreadsheets, those homes,
19 based on your assessment are question marks as to whether
20 restoration is still required at those addresses?

21 A. Correct.

22 Q. So the two defense exhibits, 4-1, 1-1, 1-2, 1-3, those do
23 not fully answer the question of where restoration is still
24 needed in the City of Flint; is that correct?

25 A. That is my understanding.

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1 MS. TALLMAN: Nothing further, your Honor.

2 MR. KUPTZ: Nothing further, Judge.

3 THE COURT: Mr. Attal, thank you. You may stand
4 down.

5 THE WITNESS: Thank you.

6 THE COURT: Ms. Tallman, do you have any further
7 witnesses?

8 MS. TALLMAN: No, your Honor.

9 THE COURT: Mr. Kuptz, does the City have any
10 witnesses you'd like to call?

11 MR. KUPTZ: Yes, Judge. The City has one witness.
12 We anticipated having two and informed the Court we had two.
13 Unfortunately, our second witness was unavailable due to a
14 medical exclusion, so we do have one, Judge.

15 THE COURT: Medical exclusion, you mean they were
16 contaminated and couldn't get in the building or something?

17 MR. KUPTZ: No. It's actually my understanding she
18 had an outpatient surgical procedure yesterday and she was
19 under a medical restriction --

20 THE COURT: I see.

21 MR. KUPTZ: -- by her physician or surgeon not to
22 attend today.

23 THE COURT: Well, I hope she's doing well.

24 Who is the witness you'd like to call?

25 MR. KUPTZ: The witness is Jeff Markstrom.

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1 May we call him now?

2 THE COURT: I'm sorry, Jeffrey?

3 MR. KUPTZ: First name is Jeff, last name is spelled
4 M-A-R-K-S-T-R-O-M, Markstrom.

5 THE COURT: Thank you.

6 Is Mr. Markstrom in the courtroom?

7 Mr. Markstrom, will you step forward, please?

8 Pause right there for a moment and raise your right
9 hand and be sworn.

10 (Oath administered at 10:05 a.m.)

11 THE COURT: Mr. Markstrom, would you please have a
12 seat in the witness box.

13 Would you please adjust the microphone so that you
14 can speak into the tip of it and would you state your full name
15 and, once again, spell your last name for the record.

16 THE WITNESS: Sure. My name is Jeff Markstrom. My
17 last name is spelled M-A-R-K-S-T-R-O-M.

18 THE COURT: Thank you.

19 Mr. Kuptz, you may proceed.

20 DIRECT EXAMINATION

21 BY MR. KUPTZ:

22 Q. Mr. Markstrom, we met and talked on lots of occasions, but
23 again, my name is Joe Kuptz. I'm an Assistant City Attorney
24 with the City of Flint. I'm here representing the City.

25 Where are you currently employed?

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1 A. I'm employed at ROWE Professional Services Company. ROWE,
2 R-O-W-E, Professional Services Company.

3 Q. And I'm just -- so we're on the same page, I'm going to
4 refer to it as ROWE throughout the questions that I have.

5 So what is your job title at ROWE?

6 A. I am the Design Services Manager at ROWE.

7 Q. How long have you been employed at ROWE in total?

8 A. Just a little over 15 years.

9 Q. What is ROWE's involvement under its current contract with
10 the City of Flint as a company with respect to the City of
11 Flint's lead pipe replacement and restoration?

12 A. Sure. Our current contract ROWE is the project manager,
13 program manager, interchangeable-type terms, for overseeing the
14 service line exploration and/or replacement and the restoration
15 component.

16 Q. And how long has that current contract with the City of
17 Flint been in place?

18 A. I don't remember the exact month but it was in mid-2022
19 when we're under our current contract.

20 Q. And since that current contract has been in place, have
21 you been involved with that contract and that project?

22 A. Yes, I have.

23 Q. Prior to the current contract that was implemented in
24 mid-2022, did ROWE have a contract with the City of Flint for
25 this type of work?

1 A. Yes, we had a contract in May -- started in May 2019 for
2 just the service line exploration and replacement component.

3 Q. So what are the fundamental differences between the
4 contract that started in May of 2019 and the contract that
5 started in mid-2022?

6 A. The major difference is that in our original contract from
7 May '19, we only administered as a program manager the service
8 line exploration and replacement component.

9 When the new contract started in mid-2022, we took on
10 the program management also of administering the restoration
11 component.

12 Q. To your knowledge, before the current contract that was
13 implemented in mid-2022, who did the management of the
14 restoration component?

15 A. It's my understanding the City of Flint administered that
16 component of the project.

17 Q. Okay. Do you have general knowledge of the requirements
18 of ROWE under both of those contracts?

19 A. Yes, I do.

20 Q. Under the contract between ROWE and the City of Flint, who
21 retains ownership of all documents that are created by ROWE or
22 provided to ROWE as part of this project?

23 A. The City of Flint.

24 Q. Now, you've told us what your job title is. Specifically,
25 on a day-to-day basis, what are your job responsibilities with

1 respect to the current contract?

2 A. I am the project manager at ROWE. My day-to-day duties
3 are just general oversight of all of our work that we're doing,
4 making sure that we're completing our tasks and as we -- as
5 required. I'm a liaison between our firm and the City of Flint
6 and just administering the program.

7 Q. You said you're a liaison between ROWE and the City of
8 Flint. Are you a liaison between ROWE and any other entities
9 such as subcontractors?

10 A. So there is a contractor that's doing the -- performing
11 the work. LGC is their name. And yes, ROWE is also -- I'm the
12 liaison between us and the contractor, also, so...

13 Q. And just to clarify, does LGC have a contract with ROWE or
14 with the City of Flint?

15 A. LGC's contract is directly with the City of Flint.

16 Q. As the project manager overseeing the day-to-day
17 operations on this project, are there other ROWE employees that
18 report to you?

19 A. Yes. On this project, we have approximately three to four
20 office staff that are working on the project. And then on a
21 daily basis, four to six field staff that are in the field
22 working on the project.

23 Q. Who are the office staff that report to you on this
24 project?

25 A. Tammy Phaneuf is one, Armando Lopez is a second and Krista

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1 A. Sure. LGC is the direct contractor that has the direct
2 contract with the City of Flint to perform the excavation
3 and/or replacement at every individual home that's eligible,
4 along with coordinating and performing the restoration at every
5 home that still needs restoration.

6 Q. And just to clarify, give a full picture, they have done
7 outreach work as well?

8 A. I apologize. Yes, they are also the -- responsible for
9 doing the outreach to obtain consent forms if needed. And
10 then, also, to do the scheduling of the work as needed to
11 perform the service line replacement.

12 Q. At some point -- I'm changing gears now.

13 At some point, were you informed by the City of Flint
14 that it was under an obligation to determine the restoration
15 status of addresses in the City of Flint where excavation had
16 occurred and potentially restoration had occurred but no
17 contemporaneous record of restoration existed?

18 A. Yes.

19 Q. When were you informed of that obligation on the part of
20 the City of Flint?

21 A. I guess, can you clarify exactly what date you're looking
22 for?

23 Q. Well, if --

24 THE COURT: He's looking --

25 THE WITNESS: I apologize. Can you restate the

1 question?

2 BY MR. KUPTZ:

3 Q. I'm just looking for the date when you learned of that
4 obligation to determine that the City of Flint had to determine
5 the restoration status of properties, where a contemporaneous
6 record of restoration might not exist.

7 A. Okay. I apologize. On May 10th, I received an email from
8 the City of Flint saying to proceed with the remaining
9 properties where there was no contemporaneous documentation,
10 so...

11 THE COURT: Is that May 10th this year?

12 THE WITNESS: May 10th of 2023, yes.

13 BY MR. KUPTZ:

14 Q. You said the remaining. Had you been informed prior to
15 May 10th of that obligation?

16 A. There was some discussion, I believe, that there would be
17 the need for it but we were not officially authorized to
18 proceed with that until the May 10th, 2023, date.

19 Q. Okay. Again, you used the word additional when you talked
20 about the May 10th. Had there been restoration status site
21 visits prior to May 10th?

22 A. Yes, there was a significant number of properties where a
23 two-person scouting team went out and performed visual
24 inspections, yes. I apologize.

25 Q. And when did that process originally begin?

1 A. I believe we started that -- I don't have the exact date
2 but we started that in the fall of '22, but then continued on
3 early in spring and worked through, I believe it was April and
4 into May, if I remember correctly.

5 Q. Okay. And then on May 10th, you said the City informed
6 you about additional two-man site inspections that needed to
7 occur?

8 A. That's correct.

9 Q. Okay. Now, you indicated that those site inspections to
10 determine restoration status began in the fall of 2022; is that
11 correct?

12 A. That's correct.

13 Q. At some point, did the City of Flint inform you that those
14 inspections did not meet the criteria established by this
15 Court's order?

16 A. That is correct.

17 Q. And what was your understanding of the Court's --
18 court-ordered requirements of those site inspection visits?

19 A. There was, I believe, seven criteria that we had to
20 conform to, which included a visual inspection, a door hanger,
21 a vid -- a snap -- a photo, all that -- I think there was -- I
22 can't remember the exact seven items we had to look at but that
23 was the requirement that had to be performed as part of those
24 site inspection.

25 Q. Generally speaking, I know you said you couldn't remember

1 exactly what seven criteria it is, but, generally speaking,
2 what were those two-man crews looking for?

3 A. So when a two-man crew went to a site, they would look at
4 the address, they would identify where the service line
5 excavation and/or replacement took place, they would look at
6 the restoration that was in and around those areas to determine
7 if it was complete or if additional restoration was required.

8 From there, a determination was made if we -- if we
9 determined that there was still work to be completed, there
10 would be identified the type of work needed and then brought
11 that back to the office for generating a work order.

12 Q. Okay. So you previously told us that these inspections
13 started in the fall of 2022. At some point later, you
14 determined -- you were informed by the City of Flint that there
15 were certain criteria that had to be followed. Did some of the
16 inspections between fall of 2022 and when you were informed by
17 the City of Flint about those court-ordered requirements, did
18 some or all of those inspections not meet the court-ordered
19 requirement?

20 A. Yes.

21 Q. And did ROWE go back and essentially redo those in that
22 gap period from fall of 2022 until you were informed about
23 those court-ordered requirements, essentially redo those?

24 A. That's my understanding, yes. Our staff did that.

25 Q. Do you know approximately -- let me go back and clarify.

1 You indicated that you were informed at some point
2 about the court-ordered inspection, site inspection
3 requirements. And then, on May 10th, you were asked by the
4 City of Flint to conduct more site inspections. So I'm going
5 to call that, just for ease of reference, set one and set two.

6 So, in set one, approximately how many restoration
7 site visits did ROWE conduct or were conducted at ROWE's
8 behest, approximately?

9 A. Yeah, I do not have that exact number but I believe it was
10 right around 13 to 14,000 number, if I recall correctly, of
11 site visits.

12 Q. And then, approximately, how many were conducted in set
13 two?

14 A. I believe that was around 11,000, plus or minus,
15 properties.

16 Q. And what's your understanding of why the City of Flint
17 asked that that set two site visits be conducted?

18 A. The set two number was properties where there was not
19 contemporaneous information to prove that the -- that the
20 restoration was complete. And therefore, we were asked to go
21 out and continue to do the visual inspection on that additional
22 set two just for -- for -- for further documentation.

23 Q. Couple more background questions.

24 Why a two-person crew on these restoration site
25 visits?

1 A. We did it for a number of reasons. One is safety. We
2 wanted our staff to be on site with a second individual because
3 we are working in and around resident's homes.

4 Two, we wanted to have a second set of eyes to look
5 at the -- the -- what is -- what the restoration status is and
6 if the two of them can compare what -- what they feel is
7 necessary to be complete. And then, obviously, just
8 documentation. We have to take a photo, just working together
9 as a partner.

10 Q. So, to summarize, safety, quality and accountability?

11 A. Yes.

12 Q. Did anything change with respect to the site visits
13 between the set one addresses and the set two addresses?

14 A. From what ROWE was doing in the field, no, it was the same
15 visual inspection just with a different set of data, so -- that
16 we were working from.

17 Q. Okay. So who were the two-man crews in set one employed
18 by?

19 A. So, initially, we started out with just two ROWE -- two
20 staff from ROWE. We then asked for -- got some assistance from
21 the contractor where we'd have one ROWE staff and one staff
22 from LGC, which allowed us to expand our capacity level and
23 perform more -- more site observations, visual inspections per
24 day, per week, so we asked -- we had some assistance from the
25 contractor for part of the set one, but mostly the set two,

1 so...

2 Q. And approximately, how many two-man crews at its peak was
3 -- were being utilized for this work?

4 A. Between six and eight two-man crews were in the field all
5 at one time.

6 Q. And can you give me a rough estimation of approximately
7 how many restoration site visits one crew could accomplish in
8 any given day or week, depending on how you can estimate it for
9 me?

10 A. Sure. We tried to give the -- the -- the individual
11 crews, the two-person crews a block of addresses that are
12 relatively close to each other to make it more efficient for
13 them. And when we were able to do that, we were seeing numbers
14 anywhere from the 120 to 140 residential visual inspections per
15 day, per crew.

16 Q. Generally speaking, are there different factors that
17 impacted when the restoration site visits could begin in 2023?

18 A. Yes, one was weather. We had to -- we elect -- we made a
19 determination to make sure that all the snow had been melted
20 from the lawns so that we could have a good visual inspection
21 of the -- the property that we were going to.

22 We had to wait -- we had to generate a language for a
23 door knocker. We had to get that approved, working through the
24 city and get that approved. And once we had that language, we
25 had to order the door hangers -- sorry, not door knocker --

1 door hangers. And once we had those in place, then we could
2 start the work. So we had a couple factors there, so...

3 Q. And can you just briefly explain to the Court what those
4 door knockers are or what they say?

5 A. So, basically, it just said we have performed a visual
6 inspection of your property and it's been determined that there
7 be no additional restoration required for your property. If
8 you have any questions, there was a phone number, I believe,
9 and I believe also an email you can call into, but it was left
10 on the individual property's door or fence, or whatever the
11 most appropriate place was to leave once we left that site.

12 Q. So that door hanger was only left at properties where that
13 two-crew determined that restoration was in fact complete?

14 A. That is correct.

15 Q. So we've talked about set one with the site visits and
16 we've talked about set two with the site visits.

17 Approximately, how long did it take to complete the set two
18 addresses of about, I believe you indicated approximately
19 11,000?

20 A. So, based on the authorization to proceed with -- I'm
21 using May 10th as the date -- we completed the set two, I
22 believe it was the Friday before the 22nd, so I guess I --
23 somewhere in that range, Friday or Monday. And I can't
24 remember what exactly dates. I apologize for those. Like, the
25 19-ish of June. Somewhere in that plus or minus range is when

1 that set two was complete.

2 Q. So those set two addresses of about 11,000 were completed
3 between about May 10th and about June 19th?

4 A. Somewhere around that range, yes, approximately.

5 Q. Was the City of Flint invoiced by ROWE and/or LGC for
6 these site visits?

7 A. ROWE, yes. It would have been included in our -- our
8 monthly invoice for the month of May. The work performed by
9 the -- with the assistance of LGC, I do not believe has been
10 included as of yet.

11 Q. So I guess my point is, the City of Flint is paying for
12 these site visits whether they've already paid for them or will
13 be paying for them?

14 A. Yes, it will be included. Yes.

15 Q. About how much did the City of Flint pay or is responsible
16 for paying for the set one site visits?

17 A. I don't have that exact number because it was kind of a
18 gray area where we stopped -- where we got to the end of set
19 one and started set two.

20 Q. If you can approximate. Don't guess.

21 A. Yeah, I -- I'm just -- I apologize. I don't have any
22 numbers of exactly where that was, but...

23 Q. Do you know about what the cost was to the City of Flint
24 for the set two visits?

25 A. I believe the overall cost, I'll start with that because I

1 think that I got that number roughly, is about 1.5 million, 1.6
2 million, is what the overall cost would be between the two --
3 set one and set two. And I apologize. I do not know the
4 breakdown, so...

5 Q. Okay. So about one and a half to 1.6 million for both set
6 one and set two?

7 A. Correct.

8 Q. But, to your knowledge as project manager on this project,
9 there was an additional cost to complete the set two addresses?

10 A. Absolutely, yes.

11 Q. Were you in the courtroom during the testimony of
12 Mr. Attal?

13 A. Yes, I was.

14 Q. And you heard his testimony?

15 A. Yes, I did.

16 Q. And is it your understanding from listening to his
17 testimony that essentially he generated a list of 704 addresses
18 at which he asserts excavation and potentially a replacement
19 had occurred but those 704 addresses did not -- were not
20 present on any of the restoration reporting provided by the
21 City of Flint?

22 A. That's my understanding.

23 Q. Okay. Have you had a chance to look at that list of 704
24 addresses?

25 A. Yeah, I received it yesterday. I did a quick look at it,

1 yes.

2 Q. Okay. Have you had a chance to review in detail all of
3 those 704 addresses?

4 A. No, I have not.

5 Q. Okay. Did you have a chance to review some of those 704
6 addresses?

7 A. I did.

8 Q. Did you take a sampling or how did you go about reviewing
9 that?

10 A. I -- I took the list and I looked at approximately ten of
11 the addresses just to try to get an understanding where they
12 were coming from and -- and looked at where -- what data we had
13 or what information we might have in our system that would --
14 would document why they're on or -- on the list, so...

15 Q. Okay. And what was your result of that sampling of
16 approximately 10 addresses?

17 A. There was one that I did -- or I looked at, actually, is
18 in the hands of LGC, the contractor, to do the restoration. So
19 that one is on that list already. And then I had some
20 addresses I looked at that had inactive water accounts and/or
21 just looking at the GIS database for the City of Flint -- or
22 for Genesee County, which include the City of Flint that look
23 like the houses may be abandoned or -- or non-livable. So I
24 just kind of looked at that from that standpoint.

25 And then I looked at, also, the active and inactive

1 water account, so just did a quick look, so...

2 Q. And typically, if a report of that nature were sent to you
3 or to ROWE by the City of Flint, who would be assigned to
4 investigate essentially what's going on with those 704
5 addresses?

6 A. Absolutely, yeah. Tammy Phaneuf. Ms. Phaneuf would be
7 the one that would take the data that we got if we got a
8 spreadsheet of what we did and she would bounce it off of all
9 the data that we have received over the years and see what we
10 can come up with from why -- why they're on there or what --
11 what information we could provide.

12 Q. Does ROWE have regular and irregular meetings with the
13 City of Flint and LGC regarding this project?

14 A. Yes. Every week, we hold a progress meeting on Wednesday
15 morning with the ROWE team, the City of Flint team, the
16 contractor's team, and some representatives from the State of
17 Michigan.

18 Q. And very briefly, generally speaking, what is discussed on
19 those Wednesday, 8 a.m. meetings?

20 A. Sure. We start out with the service line replacement and
21 exploration side of the program and we talk about progress to
22 date, issues that may have come up over the last week, because
23 we have these on a weekly basis, and -- and discuss kind of the
24 next steps on moving forward, the schedule, any upcoming
25 deadlines.

1 CROSS-EXAMINATION

2 BY MS. TALLMAN:

3 Q. Good morning, Mr. Markstrom.

4 A. Good morning.

5 Q. This is the first time you've provided sworn testimony in
6 this case, correct?

7 A. Correct.

8 Q. And you've never submitted an affidavit in this case
9 before, right?

10 A. Correct.

11 Q. You never submitted a sworn written statement in this case
12 before?

13 A. Correct.

14 Q. And the testimony today that you've provided is being
15 presented to the Court for the first time this morning,
16 correct?

17 A. Correct.

18 Q. You mentioned earlier that ROWE wanted to wait until the
19 snow cover had completely dissipated to conduct visual
20 inspections; is that right?

21 A. That was one thing we looked at, yes.

22 Q. And how long have you lived -- do you live in Flint,
23 Mr. Markstrom?

24 A. I do not.

25 Q. Where do you live?

1 A. I live in the Lansing area.

2 Q. And how far away from Flint is that?

3 A. 45 minutes.

4 Q. Are you aware of -- you know that winter and spring
5 weather in Flint and in the Lansing area can be uncertain,
6 correct?

7 A. Correct.

8 Q. And you knew that prior to February 2023, correct?

9 A. Yes.

10 Q. Okay. It wasn't that the uncertainty of Flint's weather
11 came up as a surprise to ROWE in February 2023, correct?

12 A. Correct.

13 Q. Okay. Are you aware that the Court ordered the City to
14 finish identifying the restoration status of all previously
15 excavated homes in Flint by May 1st, 2023?

16 A. Yes.

17 Q. Okay. Are you aware that the Court issued an order
18 setting that May 1st deadline in February 2023?

19 A. I don't recall what date it was issued, but I do recall
20 the date of May 1st, yes.

21 Q. Okay. Were you aware of that deadline in March?

22 A. I believe so, but I can't be certain of that, yes, so...

23 Q. Okay. Were you aware of it in February?

24 A. I'm sure we were made aware of a -- the deadline of May
25 1st. I don't remember exactly when we were made aware of it,

1 yes.

2 Q. Okay. Mr. Markstrom, you can -- ROWE or LGC can perform
3 restoration at an address if there's an inactive water account
4 at that address, correct?

5 A. Yes, the contractor can perform restoration if it's
6 inactive.

7 Q. And if a residence has an inactive water account, it's not
8 necessarily abandoned, is it?

9 A. Not necessarily, no.

10 Q. It could be a rental property that's owned by a landlord
11 but it's currently vacant, correct?

12 A. I would assume so, yes.

13 MS. TALLMAN: Okay. Nicole, can you please pull up
14 plaintiff's proposed Exhibit 47?

15 Mr. Kuptz, do you have a copy of that, or can you see
16 it?

17 MR. KUPTZ: I can see it and I believe I have a copy.

18 MS. TALLMAN: Okay.

19 BY MS. TALLMAN:

20 Q. Mr. Markstrom -- Mr. Markstrom, do you recognize this
21 document?

22 A. I'm not sure if I have seen this directly.

23 Q. Okay. Can you read the title at the top?

24 A. Sure. It says, Exhibit B, outreach work remaining as of
25 June 2023.

1 Q. Okay. And apologies.

2 MS. TALLMAN: Nicole, can you please pull up
3 Plaintiff's Exhibit 48, proposed Exhibit 48?

4 BY MS. TALLMAN:

5 Q. Okay. Mr. Markstrom, do you recognize this document?

6 A. I'm not sure if I have seen this one.

7 Q. Okay. Do you -- can you read the title of it there?

8 A. Sure. Exhibit C, excavated addresses missing from June
9 2023 restoration reporting.

10 MS. TALLMAN: Okay. Your Honor, we'd like to offer
11 into evidence proposed Plaintiff's Exhibit -- this one is
12 labeled 48 on our index. It's -- the index -- the description
13 of it is actually listed under 47. This is a spreadsheet
14 called excavated addresses missing from June 2023 reporting
15 unredacted.

16 THE COURT: Is there an objection to 48?

17 MR. KUPTZ: Can I just clarify?

18 Is this Mr. Attal's unredacted --

19 MS. TALLMAN: Correct.

20 MR. KUPTZ: No objections, Judge.

21 THE COURT: Exhibit 48 is received.

22 MS. TALLMAN: Thanks.

23 BY MS. TALLMAN:

24 Q. Mr. Markstrom, you said you had seen a list of addresses
25 that Mr. Attal produced, the 700 or so addresses that

1 plaintiffs are missing from the City's restoration reporting,
2 correct?

3 A. Yes, I received that list yesterday.

4 Q. You received it yesterday.

5 Okay. I'm going to represent to you that this is a
6 PDF print-out of that spreadsheet.

7 So assuming you -- you did review the Excel version
8 of that spreadsheet, correct?

9 A. I looked at it briefly, yes.

10 Q. Okay. Thank you.

11 Mr. Markstrom, you are the project manager of ROWE's
12 work on this Flint service line replacement project, correct?

13 A. Yes, I am.

14 Q. Are you familiar with -- you're familiar with the
15 reporting that the City produces relating to its service line
16 replacement efforts, correct?

17 A. Yes, in general. Yes.

18 Q. Does ROWE produce Excel reports for the City to produce to
19 plaintiffs in this case?

20 A. If the -- yes, if there's a report requested by the City,
21 we will produce it and provide it to the City.

22 Q. And the City requested -- the City requests monthly
23 reports of excavation and service line replacement data,
24 correct?

25 A. Correct.

1 MS. TALLMAN: Nicole, can you please pull up defense
2 Exhibit 4-1?

3 BY MS. TALLMAN:

4 Q. Mr. Markstrom, do you recognize this Excel file?

5 A. Yes, I do.

6 Q. What is it?

7 A. This is a list of addresses where restoration work has
8 been completed under the current contract by LGC.

9 Q. Okay. So if -- and in column A, there's a list of
10 addresses, correct?

11 A. Correct.

12 Q. That list of addresses appears to be in alphabetical order
13 by street name; is that correct?

14 A. It appears that way, yes.

15 Q. Okay. And if an address appears on this list, you
16 understand that restoration has been completed at that address,
17 correct?

18 A. That is correct.

19 Q. What time period is covered by current phase? That phrase
20 is in the title of the file.

21 A. It would be from the time frame when LGC became under
22 contract with the City of Flint, and I believe that was
23 September-ish of 2022 up until present.

24 Q. Okay. So if I wanted to determine whether a specific
25 address is on this spreadsheet, for example, 3202 Parkhurst

1 Ave., starting with P, like pizza, on this list, one way I can
2 do that is to scroll down to the streets that start with the
3 letter P; is that right?

4 A. I assume you can do that, yes.

5 MS. TALLMAN: Okay. Nicole, can you scroll down to
6 the street names that start with P?

7 BY MS. TALLMAN:

8 Q. Okay. Mr. Markstrom, you see in row 336, the address
9 listed is 854 Paddington Avenue?

10 A. Yes, I do.

11 Q. Looking at this, what's visible on your screen, does the
12 address 3202 Parkhurst Ave. appear?

13 A. I do not see that.

14 Q. So the address 3202 Parkhurst Ave does not appear on this
15 spreadsheet; is that correct?

16 A. That's not what I -- yeah, I do not see it, correct.

17 Q. Okay. Is there any other method you'd like to conduct to
18 confirm that 3202 Parkhurst Ave. does not appear on this
19 spreadsheet?

20 A. The only other way I would know is do a search and filter
21 and type in 3202 or Parkhurst and it would search for it, so...

22 MS. TALLMAN: Nicole, can you please click control
23 find?

24 BY MS. TALLMAN:

25 Q. Is this a way that -- this is a way you can search for

1 something in an Excel spreadsheet, correct?

2 A. That's the way I would do it, yes.

3 Q. Okay. And would you type in 3202 space Parkhurst, capital
4 P-A-R-K-H-U-R-S-T? That's the way you would search for it,
5 correct?

6 A. Yes, one way.

7 Q. And then you would click find next to have the computer
8 search for that address, correct?

9 A. Correct.

10 MS. TALLMAN: Nicole, can you click find next?

11 BY MS. TALLMAN:

12 Q. This results in a box that says, we couldn't find what you
13 were looking for. Click options for more ways to search,
14 correct?

15 A. Correct.

16 Q. And that means that the search function did not find the
17 address 3202 Parkhurst Ave., correct?

18 A. Correct.

19 Q. Okay. I'd like to use -- identify two other addresses on
20 this spreadsheet. The first one is 1809 Delaware Ave. Could
21 we use the same method we just used to see if 1809 Delaware
22 Ave. is on this spreadsheet?

23 A. I would assume so, yes.

24 MS. TALLMAN: Okay. Nicole, can you please click
25 control find and type in 1809 space Delaware, capital

1 D-E-L-A-W-A-R-E? And then, Nicole, please click find next.

2 A box popped up that says, we couldn't find what you
3 were looking for. Click options for more ways to search.

4 BY MS. TALLMAN:

5 Q. Do you see that, Mr. Markstrom?

6 A. Yes, I do.

7 Q. So the address 1809 Delaware Ave. does not appear on this
8 spreadsheet, correct?

9 A. I believe so, yes.

10 Q. Okay. Do you have any reason to believe that the search
11 function somehow messed up or made a mistake in conducting this
12 search?

13 A. No, I wouldn't.

14 Q. I'm just going to write it up here so we can remember it.

15 I'm going to do one more address to try to find it.
16 620 Lincoln Ave. I'm just going to write it up here.

17 Mr. Markstrom, we can use the same method as we used
18 for the other two addresses to find 620 Lincoln Ave. on this
19 spreadsheet, correct?

20 A. Correct.

21 MS. TALLMAN: Nicole, can you saw please type in 620
22 space capital L-I-N-C-O-L-N into the search bar and click?

23 BY MS. TALLMAN:

24 Q. Mr. Markstrom, a text box popped up, we couldn't find what
25 you were looking for. Click options for more ways to search.

1 Do you see that?

2 A. Yes, I do.

3 Q. So the address 620 Lincoln Ave. does not appear on defense
4 Exhibit 4-1, correct?

5 A. Correct.

6 Q. And the address 3202 Parkhurst does not appear on defense
7 Exhibit 4-1, correct?

8 A. Correct.

9 Q. And the address 1809 Delaware does not appear on the
10 spreadsheet defense Exhibit 4-1, correct?

11 A. Correct.

12 MS. TALLMAN: Okay. Nicole, can you please pull up
13 defense Exhibit 1-1, 1-2, 1-3? It's a single spreadsheet with
14 three tabs.

15 Thanks.

16 BY MS. TALLMAN:

17 Q. Mr. Markstrom, do you recognize this document?

18 A. Yes, I do.

19 Q. What is it?

20 A. It's a -- a list of addresses that -- where a visual
21 inspection had been performed by our -- the ROWE team and also
22 an address list of where we know that additional -- or service
23 line will be -- needs to be completed by the contractor without
24 a visual inspection.

25 Q. Do you see the date on the top of this file after it says

1 Exhibits 1-1, 1-2 and 1-3, it says 2023-06-21, correct?

2 A. Correct.

3 Q. And that is a date, June 21st, 2023?

4 A. Correct.

5 Q. Do you understand this to be the restoration status
6 reporting that ROWE produced -- ROWE created this document,
7 correct?

8 A. Yes, we did.

9 Q. And do you understand this to be the data ROWE submitted
10 to the City concerning restoration status around June 21st?

11 A. Correct.

12 Q. Okay. So I'm going to look for these three addresses
13 again or I'd like you to look for them on this spreadsheet.

14 There are three tabs here, correct?

15 A. There are.

16 Q. You're familiar with Excel -- Microsoft Excel, correct?

17 A. Yes.

18 Q. Are you aware that there's a way to search three different
19 tabs at once?

20 A. I'm not familiar with that.

21 Q. Okay. We're going to use a different method then.

22 So, do you see that this spreadsheet has three
23 different tabs?

24 A. Yes.

25 Q. And the tab that's highlighted or showing right now, the

1 title is, homes completed based on VI. Do you see that?

2 A. Yes, I do.

3 Q. VI stands for visual inspection?

4 A. Correct.

5 Q. So this is a list of homes that the City determined were
6 already all set, already restored based on a site inspection,
7 correct?

8 A. Correct.

9 MS. TALLMAN: Okay. Nicole, can you please click
10 control find?

11 BY MS. TALLMAN:

12 Q. This is a way to search a spreadsheet, correct?

13 A. Correct.

14 MS. TALLMAN: Okay. And can you type in that first
15 address, 3202 Parkhurst?

16 I think there's a typo, Nicole, if you want to --

17 BY MS. TALLMAN:

18 Q. Nicole is typing in 3202 space Parkhurst, and that appears
19 in the find what box, correct?

20 A. Correct.

21 Q. Do you see that?

22 A. Yes, I do.

23 MS. TALLMAN: Nicole, please click find next.

24 BY MS. TALLMAN:

25 Q. A text box popped up that says, we couldn't find what you

1 were looking for. Click more ways to search. Do you see that?

2 A. Yes, I do.

3 Q. So the address 3202 Parkhurst does not appear on the tab,
4 homes completed based on VI in this document, correct?

5 A. Correct.

6 Q. Okay. Let's do the next address.

7 MS. TALLMAN: Nicole, can you please click okay and
8 then go back to the search bar?

9 BY MS. TALLMAN:

10 Q. Let's search for 1809 Delaware. So Nicole is typing in
11 1809 space Delaware. Can you -- do you see that,
12 Mr. Markstrom?

13 A. Yes, I do.

14 MS. TALLMAN: Can you click find next, Nicole?

15 BY MS. TALLMAN:

16 Q. That same text box popped up saying, we couldn't find what
17 you were looking for. Click more way -- click options for more
18 ways to search. Do you see that, Mr. Markstrom?

19 A. Yes, I do.

20 Q. So do you -- you conclude that the address 1809 Delaware,
21 does not appear on this tab, homes completed based on VI,
22 correct?

23 A. Correct.

24 Q. Let's try to find the third address.

25 MS. TALLMAN: Nicole, can you type into the find what

1 box, 620 space Lincoln?

2 BY MS. TALLMAN:

3 Q. Mr. Markstrom, do you see that the words -- or 620 space
4 Lincoln appears in the find what box, correct?

5 A. Yes, I do.

6 MS. TALLMAN: Nicole, can you click find next?

7 BY MS. TALLMAN:

8 Q. A text box popped up saying, we couldn't find what you
9 were looking for. Click options for more ways to search. You
10 see that, correct?

11 A. Yes, I do.

12 Q. So the three address -- none of the three addresses, 3202
13 Parkhurst, 1809 Delaware and 620 Lincoln appear on this tab,
14 homes completed based on VI, correct?

15 A. Correct.

16 MS. TALLMAN: Okay. Nicole, can you please click
17 over to that middle tab?

18 BY MS. TALLMAN:

19 Q. This says, homes to complete based on VI, correct?

20 A. Correct.

21 Q. That's the name of this tab, right?

22 VI means visual inspection, correct?

23 A. Exactly, yes.

24 Q. And so this tab reflects addresses. Do you see there's a
25 list of addresses in column A on the left?

1 A. Yes.

2 Q. So this tab reflects addresses where the City determined
3 it still needs to go back and restore that property based on a
4 visual inspection it conducted, correct?

5 A. Correct.

6 Q. Okay. I'd like to use the same method to try to find
7 these three addresses.

8 MS. TALLMAN: Nicole, can you please open the text
9 box?

10 BY MS. TALLMAN:

11 Q. Mr. Markstrom, do you see 620 Lincoln is showing in the
12 find box?

13 A. Yes.

14 MS. TALLMAN: Nicole, can you click find next?

15 BY MS. TALLMAN:

16 Q. Mr. Markstrom, do you conclude from this pop-up box
17 saying, we couldn't find what you were looking for, that the
18 computer did not find 620 Lincoln in this tab?

19 A. Yes.

20 Q. And so 620 Lincoln does not appear in this tab, the middle
21 tab, homes to complete based on VI?

22 A. Correct.

23 MS. TALLMAN: Okay. Nicole, can you reopen the find
24 text box and type in 3202 space Parkhurst?

25 BY MS. TALLMAN:

1 Q. Mr. Markstrom, do you see that 3202 Parkhurst -- space
2 Parkhurst appears in that find?

3 A. Yes, I do.

4 MS. TALLMAN: Nicole, can you click find next,
5 please?

6 BY MS. TALLMAN:

7 Q. A pop-up box popped up saying, we couldn't find what you
8 were looking for. Click options for more ways to search. Do
9 you see that?

10 A. Yes, I do.

11 Q. So the address 3202 Parkhurst does not appear in the
12 middle tab, homes to complete based on VI, correct?

13 A. Correct.

14 Q. Okay. Let's do the last address.

15 MS. TALLMAN: Nicole, can you please type in 1809
16 Delaware?

17 BY MS. TALLMAN:

18 Q. Mr. Markstrom, can you confirm you see 1809 Delaware in
19 that search box?

20 A. I do.

21 MS. TALLMAN: Nicole, can you click find next?

22 BY MS. TALLMAN:

23 Q. A pop-up box popped up saying, we couldn't find what you
24 were looking for. Click options for more ways to search. Do
25 you see that?

1 A. Yes, I do.

2 Q. So the address 1809 Delaware does not appear in this
3 middle tab, homes to complete based on VI?

4 A. Correct.

5 Q. Okay. So, in this middle tab, none of the three
6 addresses, 3202 Parkhurst, 620 Lincoln and 1809 Delaware appear
7 in this middle tab, homes to complete based on VI, correct?

8 A. Correct.

9 Q. Okay. There's one last tab in this spreadsheet. It's
10 called, known homes to complete. Do you see that?

11 A. Yes, I do.

12 Q. And this appears to be a list of addresses, correct?

13 A. Yes.

14 Q. And you understand that this is a list of addresses where
15 the City knows ROWE and the City know, based on their records,
16 that they still need to go back to that home to conduct
17 property restoration, correct?

18 A. Correct.

19 MS. TALLMAN: Nicole, can you please click control
20 find and pull up that find box?

21 BY MS. TALLMAN:

22 Q. Mr. Markstrom, we can use the same method to search for
23 addresses in this tab, correct?

24 A. Correct.

25 Q. And, Mr. Markstrom, you see that 1809 Delaware appears in

1 that search box?

2 A. Correct.

3 MS. TALLMAN: Nicole, can you click find next?

4 BY MS. TALLMAN:

5 Q. A pop-up box says, we couldn't find what you were looking
6 for. Click options for more ways to search.

7 So, Mr. Markstrom, the address 1809 Delaware does not
8 appear in this tab, known homes to complete, correct?

9 A. Yes.

10 MS. TALLMAN: Nicole, can you please type in to the
11 find box 3202 Parkhurst?

12 BY MS. TALLMAN:

13 Q. Mr. Markstrom, the address -- or the text 3202 space
14 Parkhurst appears in the find what box in this find and replace
15 function, correct?

16 A. Yes, it does.

17 MS. TALLMAN: Nicole, can you click find next?

18 BY MS. TALLMAN:

19 Q. That same pop-up box popped up.

20 Mr. Markstrom, do you conclude from that that the
21 address 3202 Parkhurst does not appear in the tab, known homes
22 to complete?

23 A. I do.

24 Q. And let's do the last one.

25 MS. TALLMAN: Nicole, can you please type in 620

1 space Lincoln?

2 BY MS. TALLMAN:

3 Q. Mr. Markstrom, do you see 620 space Lincoln typed in the
4 find what box?

5 A. I do.

6 MS. TALLMAN: Nicole, can you please click find next?

7 BY MS. TALLMAN:

8 Q. That same pop-up box popped up saying, we couldn't find
9 what you were looking for. Click options for more ways to
10 search. Do you see that?

11 A. Yes, I do.

12 Q. And you conclude from that that 620 Lincoln does not
13 appear on that tab, known homes to complete, correct?

14 A. Correct.

15 Q. So the three addresses, 3202 Parkhurst, 1809 Delaware and
16 620 Lincoln, do not appear on any tabs in this spreadsheet,
17 correct?

18 A. Correct.

19 Q. Are there any other tabs in the spreadsheet that I've
20 missed?

21 A. No.

22 Q. Do you have any reason to believe that the three addresses
23 we've been discussing are in this spreadsheet?

24 A. No, I do not.

25 Q. Okay. And the two spreadsheets we just looked at this one

1 with three tabs and the previous exhibit, the current phase
2 addresses, that's defense Exhibit 4-1, those two files are the
3 entirety of the June reporting that ROWE provided to the City
4 on restoration status, correct?

5 A. I believe so, yes.

6 MS. TALLMAN: Okay. Nicole, can you please pull up
7 defense -- or, excuse me, Plaintiff's Exhibit 25 on the screen?

8 BY MS. TALLMAN:

9 Q. Mr. Markstrom, do you recognize this document?

10 A. I do not.

11 Q. Okay. Can you read the title at the top of that, of the
12 file?

13 A. Sure. I -- real quick. Apologies.

14 Right. Thank you.

15 2019.04.29 monthly reporting -- monthly report. Sorry.

16 Q. Was ROWE contracted with the City in April 2019 to conduct
17 work on the service line replacement program?

18 A. No, we were not.

19 Q. Okay. Do you see the column on the left?

20 A. Yes, I do. Yep.

21 Q. Can you read the title of that column?

22 A. Sure. Address of service line exploration.

23 Q. And beneath that, there's a list of addresses, correct?

24 A. Correct.

25 Q. And then the next column over from the left, do you see

1 the title of that column?

2 A. Yes.

3 Q. Can you read it?

4 A. Sure. Service line exploration date.

5 Q. And then there's a series of dates beneath that title,
6 correct?

7 A. Correct.

8 Q. I'm going to represent to you that -- or looking at this
9 -- looking at this spreadsheet, how do you interpret it?

10 A. It appears to be dates that work was completed at
11 individual addresses.

12 Q. Okay. And part -- part of your contract with the City was
13 to determine which homes that it had previously excavated,
14 needed restoration, correct?

15 A. Correct.

16 Q. And you spoke with the City about what records they might
17 have about where they've conducted excavations and
18 replacements, correct?

19 A. We've had communication, yes.

20 Q. And the City has provided you with all the data that they
21 have concerning where they've conducted excavations and
22 replacements, correct?

23 A. They provided us data. I don't know if I would say all
24 the data, but they provided us data, yes.

25 Q. So you're not sure whether the City has provided you

1 complete data on where excavations and replacements have
2 occurred, correct?

3 A. Correct.

4 MS. TALLMAN: Nicole, can you please scroll down to
5 page 5 of this document? This is 5.

6 BY MS. TALLMAN:

7 Q. Okay. Mr. Markstrom, about halfway down the page in that
8 first column, do you see the address 2302 Parkhurst Ave listed?

9 A. I do.

10 Q. And do you see a date listed next to it?

11 A. Yes.

12 THE COURT: You've been searching for 3202 Parkhurst,
13 not 2302 Parkhurst.

14 MS. TALLMAN: Oh, correct. Thank you, your Honor.

15 THE COURT: So look at your easel there.

16 MS. TALLMAN: Yes. Nicole, can you please find --
17 see if 3202 Parkhurst is on this spreadsheet? Can you click
18 control find here?

19 Okay. Nicole, can you please pull up proposed
20 Plaintiff's Exhibit 35?

21 THE COURT: Well, I can tell you, based on your
22 Exhibit 48, which I think were Mr. Attal's summary, there is no
23 3202 Parkhurst.

24 MS. TALLMAN: Okay. Thank you, your Honor.

25 This is proposed Plaintiff's Exhibit 35. Defense

1 counsel has stipulated that it is a monthly report produced by
2 -- produced by the City in this case.

3 Plaintiffs move to admit this document into evidence.

4 THE COURT: Monthly report for 2017, May 30 -- or
5 June 30?

6 MS. TALLMAN: May 30.

7 THE COURT: Yes. Is there any objection to 35?

8 MR. KUPTZ: None, Judge.

9 THE COURT: 35 is received.

10 MS. TALLMAN: Okay.

11 BY MS. TALLMAN:

12 Q. Mr. Markstrom, do you recognize this document?

13 A. I do not.

14 Q. Can you read the title of the document?

15 A. Sure. 2017.05.30 LSL replacement data.

16 Q. Do you understand LSL to refer to lead service line?

17 A. That's the way I would interpret it, yes.

18 Q. And in the middle column, it says, address of resident --
19 residence, correct?

20 A. It does, yes.

21 Q. Okay. And the far column on the right says, date work was
22 performed, correct?

23 A. Yes, it does.

24 Q. And beneath that, there's a series of dates, correct?

25 A. Correct.

1 Q. And the one through third column from the left says, what
2 material type was the service line's public portion, correct?

3 A. Correct.

4 Q. And beneath that, there's entries -- on page 1, the
5 entries are either lead or copper, correct?

6 A. Yes.

7 Q. Okay. And then the next column over, so second from the
8 right, the title is, what material type was the service line's
9 private portion, correct?

10 A. Correct.

11 Q. And beneath that, there's entries saying -- either on page
12 1, galvanized or copper, correct?

13 A. Correct.

14 Q. Okay. And if you look about -- if you -- these appear to
15 be -- there's a bunch listed that are on Delaware Ave. under
16 address of residence, correct?

17 A. Yes.

18 Q. And do you see 1809 Delaware Ave. listed about eight or
19 nine down?

20 A. I do, yes.

21 Q. And what is the entry under what material type was the
22 service line's public portion next to 1809 Delaware Ave.?

23 A. It's written as lead.

24 Q. And what does it say next to -- what material type was the
25 service line's private portion?

1 A. It's listed as galvanized.

2 Q. And then what date is listed on that?

3 A. 3.29 of 2017.

4 Q. I'm going to ask you to -- I'm going to represent to you
5 that this is part of the City of Flint's reporting to
6 plaintiffs in this case about lead service line excavations and
7 replacements. With that information, would you conclude that
8 the address 1809 Delaware Ave. had service line work conducted
9 at it on March 29th, 2017?

10 A. Based on the data provided, it looks like there was some
11 work completed on that date, yes.

12 Q. Okay. Thank you.

13 MS. TALLMAN: Nicole --

14 THE COURT: Ms. Tallman, how much more do you have?

15 MS. TALLMAN: Just one last -- one last address and a
16 few additional questions, if I may, your Honor.

17 THE COURT: How many are a few?

18 MS. TALLMAN: Less than 10.

19 THE COURT: Well, all right. We're going to take a
20 recess.

21 MS. TALLMAN: Okay.

22 THE COURT: I'll see the people on Franklin Capital
23 back in chambers. And then, after that, I'll -- I'm going to
24 interrupt this with another proceeding on the record and then
25 we'll finish up.

1 MS. TALLMAN: Okay. Thank you, your Honor.

2 THE COURT: Recess court, please.

3 THE CLERK: All rise.

4 Court is now in recess.

5 (Off the record at 11:15 a.m.)

6 (Back on the record at 12:10 p.m.)

7 THE CLERK: All rise.

8 Court is back in session.

9 THE COURT: You may be seated.

10 All right. Mr. Markstrom, can you come back to the
11 witness stand, please?

12 And, Ms. Tallman, let's finish up this cross.

13 MS. TALLMAN: Thank you, your Honor.

14 THE COURT: Mr. Markstrom, do you understand you're
15 still under oath?

16 THE WITNESS: I do.

17 THE COURT: All right.

18 MS. TALLMAN: Nicole, can you please pull up
19 Plaintiff's proposed Exhibit 31 on the screen?

20 Your Honor, I'd like to offer proposed Exhibit --
21 Plaintiff's Exhibit 31 into evidence. Defense counsel has
22 stipulated to its authenticity and admissibility.

23 THE COURT: Describe it for the record, please.

24 MS. TALLMAN: This is a spreadsheet that is part of
25 the City of Flint's status report, dated February 28th, 2018,

1 describing all addresses where a service line was excavated or
2 replaced by the City during the reporting period February 2018,
3 including the date of the excavation and/or service line
4 replacement.

5 THE COURT: Mr. Kuptz, any objection to 31?

6 MR. KUPTZ: None, Judge.

7 THE COURT: 31 is received.

8 MS. TALLMAN: Thank you.

9 BY MS. TALLMAN:

10 Q. Mr. Markstrom, have you seen this document before?

11 A. No, I have not.

12 Q. Can you read the title at the top?

13 A. Sure. 2018.02.28 fast SLR data.

14 Q. SLR refers to service line replacement, correct?

15 A. Correct.

16 Q. And in the column furthest to the left, that title says
17 parcel address, correct?

18 A. Correct.

19 Q. And the next column over on the right -- sorry, second
20 from the left says, original public material, correct?

21 A. Yes.

22 Q. And beneath that on page 1 of the exhibit, there's some
23 entries saying either lead or copper, correct?

24 A. Correct.

25 Q. And two columns over, so this is second from the right,

1 the title says, work date performed, correct?

2 A. Yes.

3 Q. And beneath that is a series of addresses, correct?

4 A. Series of dates.

5 Q. Oh, dates. Thank you.

6 Yes. Beneath that is a series of dates, correct?

7 A. Correct.

8 Q. And the column furthest to the right says, new underscore
9 portion underscore replaced at the top, correct?

10 A. Correct.

11 Q. And beneath that, there's some entries, either both, none
12 or public only or private only on page 1 of the document,
13 correct?

14 A. Yes.

15 Q. I'm going to represent to you that this is part of the
16 City of Flint's reporting on service line replacements
17 conducted during February 2018. ROWE -- does ROWE have this
18 data?

19 A. I am not sure.

20 Q. You're not sure.

21 Now, on page -- on page 1 of the document, about two-
22 thirds the way down, do you see an address that says 620
23 Lincoln Ave.?

24 A. Oh, yes, I do. Yep.

25 Q. Okay. And next -- in the next column over, it says, lead,

1 correct?

2 A. Correct.

3 Q. And the date in the row of that address says 4.10.2017,
4 correct?

5 A. It actually says 4.11.2017.

6 Q. Thank you. Excuse me. Yes.

7 4.11.2017, correct?

8 A. Correct.

9 Q. And on the furthest column over, it says both, correct?

10 A. Correct.

11 Q. So the address 620 Lincoln Ave. is on this spreadsheet
12 that we're looking at, Plaintiff's Exhibit 31, correct?

13 A. Yes.

14 Q. And this is data from the City about lead service line
15 replacements conducted in the past, correct?

16 A. I would assume so, yes.

17 Q. Okay. And do you recall earlier today we looked at
18 defense Exhibits 1-1, 1-2, 1-3 and 4-1, that is the June
19 restoration status reporting. Do you remember looking at those
20 spreadsheets?

21 A. I do, yes.

22 Q. And the address 620 Lincoln Ave. was not on either of
23 those two June spreadsheets, correct?

24 A. That's correct.

25 Q. Thank you. Just a few more questions.

1 You discussed earlier with Mr. Kuptz that you
2 reviewed Mr. Attal's list of roughly 700 addresses, correct?

3 A. I took a brief look at it, yes.

4 Q. And you conducted some additional analysis of roughly 10
5 of those, correct?

6 A. Just to see what was on there, yes.

7 Q. The other roughly 690, you didn't do any other work other
8 than noting that there was a long list of addresses, correct?

9 A. That is correct.

10 Q. So it's possible that some of those addresses have been
11 excavated or replaced, the service lines by the City of Flint,
12 correct?

13 A. I would say there's -- there's a chance, correct.

14 Q. You don't know --

15 A. I don't.

16 Q. -- whether or not -- you don't know whether or not all of
17 the addresses on Mr. Attal's list have been excavated or
18 replaced, correct?

19 A. That is correct.

20 Q. And you don't know whether the City -- you don't know
21 whether the City has reported a restoration status as to those
22 addresses, correct?

23 A. I do not.

24 MS. TALLMAN: Nothing further, your Honor.

25 THE COURT: Thank you. Would you like some redirect?

1 Q. And you haven't checked to see if they're owned by the
2 Land Bank?

3 A. No.

4 Q. And you haven't checked to see if they're on the City of
5 Flint's demolition list?

6 A. No.

7 MR. KUPTZ: Thank you. That's all I have.

8 THE COURT: Thank you.

9 Anything else, Ms. Tallman?

10 MS. TALLMAN: Just a few questions, if I may, your
11 Honor.

12 RE-CROSS-EXAMINATION

13 BY MS. TALLMAN:

14 Q. Mr. Markstrom, Mr. Kuptz just asked you about when ROWE
15 began the visual inspections and you talked about beginning
16 those inspections after the snow cover was no longer on the
17 ground; is that correct?

18 A. That is correct.

19 Q. At some point since ROWE started those visual inspections,
20 ROWE increased its staffing, it increased the number of crews
21 performing those inspections, correct?

22 A. That is correct.

23 Q. And ROWE increased its staffing on or around May 1st,
24 2023; is that correct?

25 A. Right around that time, correct.

1 MS. TALLMAN: Okay. Nothing further, your Honor.

2 THE COURT: Okay. Mr. Markstrom, you testified in
3 response to a question about learning that the inspections that
4 you had been doing did not meet the requirements of a court
5 order. Do you remember that testimony?

6 THE WITNESS: Yes, I do.

7 THE COURT: And you said from that point, you sort of
8 divided up statistically, I guess, the work that you did
9 beforehand and then the work that you did afterward, right?

10 THE WITNESS: Yes. We -- we started performing
11 visual inspections in the fall of '22 to start looking at
12 restoration, what remaining restoration is available -- or what
13 is required. Sorry. That was prior to our knowledge of the
14 formal court order of the seven criteria that had to be taken
15 care of.

16 THE COURT: Right. When is it -- can you give me a
17 date as to when you learned about the court order and what you
18 had -- what you were supposed to be doing?

19 THE WITNESS: I believe we were informed of the
20 potential of it in the fall of '22, winter of '22, but then we
21 -- I do not recall the exact date of when we started performing
22 the seven criteria in the spring of '23.

23 THE COURT: Okay. So you were informed about the
24 fact that you needed to do more in the fall of '22, and then
25 you implemented that after the snow cleared in the spring of

1 2023?

2 THE WITNESS: Correct.

3 THE COURT: All right. You also indicated that your
4 restoration began in 2023 as soon as the weather allowed. Can
5 you put a date on that?

6 THE WITNESS: I -- I think it was, if I recall
7 correctly, in late April or early May, the contractor was able
8 to start doing actual construction in the field restoration
9 construction.

10 THE COURT: Are you telling me the snow didn't clear
11 in Flint until late April of 2023?

12 THE WITNESS: There's a little issue with doing
13 restoration. It's not only does the snow has to be cleared,
14 the ground has to be unfrozen, or thawed, I should say. And
15 sometimes when you're doing lawn restoration, you can't put
16 down seed and mulch until the ground -- the ground has warmed
17 up, so that part has a little delay. Also --

18 THE COURT: Not just that the frost has to come out,
19 it has to also be receptive to --

20 THE WITNESS: Correct. Germination and growth.

21 THE COURT: -- to landscaping?

22 THE WITNESS: Yep, yep.

23 And then on the hard surface side, the asphalt and
24 the concrete side, you want to make sure that the ground is
25 still not frozen and that the asphalt plans and the concrete

1 plans are up in production for the year. And in Michigan, that
2 typically happens sometime in the month of May.

3 THE COURT: Oh, I see. Okay.

4 THE WITNESS: Yeah.

5 THE COURT: All right. Anything else then?

6 MS. TALLMAN: Yes, your Honor.

7 THE COURT: I'm going to ask Mr. Kuptz first.

8 MR. KUPTZ: Just one question.

9 THE COURT: Yeah, right.

10 REDIRECT EXAMINATION

11 BY MR. KUPTZ:

12 Q. Mr. Markstrom, I just wanted to clarify from the testimony
13 you just gave in response to the Judge's question that any
14 restoration site visits that were conducted in the fall of 2022
15 that ROWE later determined did not apply all of those visual
16 inspection criteria, were all of those redone?

17 A. That is my understanding, yes, we went back to all of 'em.

18 MR. KUPTZ: Thank you. That's all.

19 THE WITNESS: All of them. Sorry.

20 THE COURT: And when were they redone?

21 THE WITNESS: During the -- the -- probably, I guess,
22 as it was mentioned earlier, the first dataset, I would think
23 would have been done and we would have completed those in the
24 month of April or May.

25 THE COURT: All right. Was there a difference

1 between taking a look at the properties to see what restoration
2 had to be done and actually doing the restoration?

3 THE WITNESS: The -- the visual inspection that --
4 that ROWE performed just identified what work was required,
5 then the contractor actually had to go out and do the physical
6 work.

7 THE COURT: Got it.

8 When did you start doing the visual inspections in
9 2023?

10 THE WITNESS: I believe that was again in April-ish,
11 if I remember correctly, the date.

12 THE COURT: All right. You didn't need frost coming
13 out of the ground to do a visual inspection, did you?

14 THE WITNESS: No, we did not need that. We needed to
15 have the language for the door hanger approved. That was part
16 of the visual inspections. We didn't want to send our crews
17 out once and then have to go back to the same address to hang a
18 door hanger. So we had a couple things that we were waiting to
19 get completed. Once all those were agreed upon and we ordered
20 the door hangers and got the printing back, then we started the
21 actual -- the formal visual equal inspections.

22 THE COURT: Were you tasked with -- with putting the
23 door hangers together?

24 THE WITNESS: We assisted the City with the -- with
25 the language, putting together a door hanger, and we provided

1 it to the City.

2 THE COURT: When did you start working on that?

3 THE WITNESS: I don't recall the exact date.

4 THE COURT: Can you give me an estimate?

5 THE WITNESS: February, March-ish, I would think.

6 Somewhere in that range. Maybe March, April. Somewhere in
7 that range.

8 THE COURT: February, March, April?

9 THE WITNESS: Somewhere in that time range. I
10 apologize. I don't know when we started that.

11 THE COURT: Oh, okay. So your answer is you don't
12 know?

13 THE WITNESS: Exactly.

14 THE COURT: All right.

15 MS. TALLMAN: Thank you, your Honor.

16 RE-CROSS-EXAMINATION

17 BY MS. TALLMAN:

18 Q. Mr. Markstrom, you just explained that you became aware of
19 the possibility of a requirement to do these visual inspections
20 in fall of last year, 2022, correct?

21 A. Correct.

22 Q. And you attended some meetings where plaintiff's counsel,
23 including with me, during the fall of 2022, concerning these
24 issues, correct?

25 A. I believe so, yes.

1 Q. And during that meeting, plaintiffs proposed specific
2 criteria to govern the City's visual inspections to ensure
3 their accuracy, correct?

4 A. I believe so, yes.

5 Q. And those criteria are very similar to the criteria that
6 appear in the court's order or -- is that correct?

7 A. I believe so.

8 THE COURT: Are you referring to the February 2023
9 order?

10 MS. TALLMAN: Yes, the February 2023 order.

11 BY MS. TALLMAN:

12 Q. And those criteria that were proposed by plaintiffs and
13 ultimately adopted by this court came from the City's own
14 contracts governing restoration work; are you aware of that?

15 A. That, I'm not a hundred percent sure of, so...

16 MS. TALLMAN: Nothing further, your Honor.

17 THE COURT: Do you have any further witnesses?

18 MR. KUPTZ: No, Judge.

19 THE COURT: All right. Thank you, Mr. Markstrom.
20 You may stand down.

21 THE WITNESS: Thank you.

22 THE COURT: Any further witnesses?

23 MS. TALLMAN: No, your Honor.

24 THE COURT: All right. How do you want to proceed?

25 MS. TALLMAN: If the Court will permit oral argument